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Productivity Commission
Aboriginal and Torres Strait Islander Visual Arts and Crafts

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Aboriginal and Torres Strait Islander visual arts and crafts

Response to Issues Paper

Introduction

The Aboriginal Art Association of Australia Ltd (“AAAA”) serves and represents artists, individuals and organisations that produce, promote, protect, and support Indigenous Art, and the cultures that create and nurture that art.

Membership includes over 250 Indigenous artist members (independent and art centre affiliated), over 50 trade members drawn from commercial galleries, dealers, art centres, licensors, and mixed retail outlets marketing fine art and souvenirs and nearly 500 supporter members.

Our Board of 10 is comprised of 5 Indigenous members and 5 non-Indigenous members. The Association also has an Aboriginal Cultural Council on which it relies for advice on matters of Indigenous culture. The full suite of AAAA objectives is in our Constitution, at s.3. (<http://aboriginalart.org.au/aaaa/wp-content/uploads/2016/10/Constitution-ofAboriginal-Art-Association-of-Australia-Ltd>)

Together with the promotion of ethical practice, AAAA has for 22 years grappled with growing the Indigenous visual art industry’s economic, social and employment benefits and opportunities, and with sharing those ideas with policy makers.

Structure of response

This Study “will draw on the findings and insights of relevant inquiries, research and submissions, noting that art sector participants have contributed much time and effort to improve policies and laws as part of previous processes.” (Issues paper, p.1)

Our response avoids delving into detail and, instead, we refer you to relevant previous AAAA submissions. Our response requires / assumes that our attached submissions will be read as part of this response.

What issues should this study focus on?

We respond in two parts:

- First, the ‘big-picture’ issues.
- Second, specific issues which we ask the study to focus on.

Big picture

- Examine the ATSI arts sector *as a whole*. If the study is to properly understand “the value, nature and structure” of ATSI visual arts, it must encompass Indigenous artists across the *whole* sector, not just parts of it.
- Examine whether policy addresses all artists, art centre based and independent, as well as galleries and dealers
- Measure contributions of *all* market participants, including engaging with and consulting the gallery sector for its insights
- Understand sources of and measure grant spend right across the Indigenous visual arts (IVA) industry
- Where/How is the money being spent? - measure where funding is directed - supply of materials and operations vs. growth, skills development including the handover of operations to artists/community vs exhibitions vs retail support, and consider focus of spend (production driven vs consumer driven)
- Analyse efficacy of spend
- Identify potential for improved outcomes from spend
- Identify other latent opportunities
- Identify inefficiencies in allocation and administration of spend and potential for improved analysis and processes

- Examine the current drivers for spend and examine where spend is directed and examine the degree to which the current construct supports the Federal Government's *National Indigenous Visual Arts Action Plan 2021-2025* ("Action Plan").
- Examine the Action Plan, particularly whether it provides equal opportunity for artist participants, art centre and independent
- IVA – Cost or Opportunity - Compare the contribution of IVA to Indigenous employment and advancement with achievements in other social and economic policy areas. Aim to identify the relative spend levels between support for IVA and the overall spend on Indigenous disadvantage/advancement and assess against outcomes generated
- Attempt to measure both direct and indirect IVA employment - not just artist/s and creators, but the whole of the market supply chain
- Measure Economic contribution of the whole market supply chain, not just sales
- Audit the IVA marketplace, to estimate the need for access to art fairs, training, and skills development across the full range of running a small art business. Use that audit as the basis for recommending relevant needs-based training and industry-development policies, with future funding using KPI measurements reflecting the satisfying of those needs
- Examine the vision for the IVA from the perspective of key participants such as government, bureaucracy (federal, state, and local), industry organisations, industry support and then, identify inconsistencies, inequities, and opportunities for improvement, particularly via improved co-ordination
- Look at the opportunity for a permanent industry round table
- Identify the structures and support necessary (legal, legislative, governmental, bureaucratic) to take the industry forward for the next 50 years and compare to the current construct
- Understand and explain the differences between remote art centre participants versus other artist and industry participants; how each is supported, and the opportunities to build a better, more equitable approach
- Identify and recommend practical short-term measures to address the issues that gave rise to the study, i.e., the House of Representatives Standing Committee on Indigenous Affairs' *Report on the impact of inauthentic art and craft in the style of First Nations peoples* (HoRSCIA 2018), and the identification of longer-term

legislative solutions (driven by exhaustive bottom-up feedback) that may be available.

- The time available for the study looks very tight. The study should therefore consider making recommendations about:
 - What further data remains to be gathered
 - How further data collection, analysis, or audit should be continued, and by whom.

Specific issues

1. Help improve self-governance and support the development of an industry-driven, cohesive IVA road map.

The IVA sector is entering a new growth phase. That welcome growth will not, by itself, overcome an important characteristic. The industry has always struggled with how to resolve its ‘growing pains’ without public slanging matches that undermine customer trust and confidence.

Commercial tensions generate public claims about competitors that do nothing about the competitive threat but do damage trust in the whole Indigenous art and craft product. This is the case with the hurtful and biased claims about what Indigenous fine art is ‘authentic’. Some parts of one of the production models (model A) choose to compete against other production models (model B) by alleging publicly that only model A produces authentic Indigenous art, and, further, that buying Indigenous art from model B is ethically wrong.

The AAAA hopes the study can convince government that government has a role to play in providing a mechanism where challenges such as this can be addressed.

A possible solution may include a permanent industry round table. Such a round table could also be responsible for the bottom up build of future Action Plans, providing the Federal Government with a more robust basis and a cohesive mechanism for the development of these Plans.

The AAAA asks the Study to examine the current challenge and make appropriate recommendations as well as considering the merit of an industry round table.

2. Identify and recommend corrections to the unbalanced timeline and inequitable manner countenanced for introducing the QR code / labelling tool planned for in the Action Plan.

The AAAA fears long-term competitive damage to market structure, and damage to ATSI artists working outside of the art centre model.

We use Minister Wyatt's Foreword to the Government's (21st October) *National Indigenous Visual Arts Action Plan 2021-2025* to help explain our concern.

Framing our concern this way also introduces you to what AAAA sees as a significant element of the "nature" of the IVA markets.

Minister Wyatt Foreword:

"Aboriginal and Torres Strait Islander visual art is a critical element of cultural sustainability for Indigenous Australia. Indigenous artists express their culture, identity and connection to their land and community through art." (p.5)

AAAA comment – Agreed, but "Indigenous artists" means ALL Indigenous artists, not just some of them.

"Investing in Indigenous cultures and building the Aboriginal and Torres Strait Islander community-controlled sector is a priority for the Australian Government."

AAAA comment: Building the "community-controlled sector" remains an appropriate priority but should not be done in a way that disenfranchises parts of the Indigenous arts sector operating outside the ATSI community-controlled sector.

"A thriving Indigenous arts sector safeguards cultural practices and provides significant economic, social and cultural benefits."

AAAA comment: True, but the "Indigenous arts sector" is more than the "community-controlled sector."

"The partnership of artists and the visual arts community has assured that the strategies developed in this Action Plan will contribute to the sustainable growth of our vibrant, unique Indigenous visual art sector."

AAAA comment: Growth can't be sustainable if that visual arts community is fractured by a QR labelling system *rollout* that damages a major part of the sector.

- AAAA is very concerned that *an uneven, unbalanced rollout* will create a structural barrier that will cause significant competitive harm and thus damage parts of the industry, and consumers.

- AAAA asks the study to examine Minister Wyatt’s Foreword and contrast it with the new Action Plan’s 10 initiatives (at p. 6), especially initiative #5 set out below:
- **5. Fund the national rollout of digital labelling for artworks and products to support the market for Indigenous visual art created in Indigenous art centres.** (Our emphasis)
- **Deliverable 5. National rollout of digital labelling for art works and products. (p.26 Action Plan)**
- Year one
- An independent evaluation of the digital labelling trial is undertaken.
- Year two
- Subject to the findings of the evaluation, an announcement will be made on the next stage of the digital labelling project and set performance measures.
- Year 3
- Roll out of digital labelling commences *to up to 20 art centres* (subject to review findings). (Our emphasis)
- Year 4
- Roll out of digital labelling continues (subject to review findings).
- AAAA asks - Is this year 4 roll-out to include artists operating outside the art centre model?
- Even if this stage of the roll-out does extend to all Indigenous visual artists, we ask the study to examine what would happen in the prior years during which consumers are effectively told that only QR coded/labelled Indigenous visual art is “authentic”?
- See, for example, the ABC news article “*Indigenous art funding boost to roll out QR codes so customers can check authenticity of works*”, posted on 20 October 2021, at the same time as the release of the Action Plan:
- “The federal government has boosted funding to the Indigenous arts sector, including money to roll out QR codes that allow customers to check the authenticity and cultural significance of artwork and products.”
- <https://www.abc.net.au/news/2021-10-21/Indigenous-art-centre-funding-for-qr-codes-nbn-access/100555098>
- If a QR system were to be rolled out in only one part of the market, that sort of messaging would seriously disrupt consumer confidence and trust in other parts of the market and create an anti-competitive structure which would risk *shrinking* the market, not growing it.
- We ask the Productivity Commission to recommend what steps need to be taken to prevent that sort of unintended consequence.

We refer you to:

AAAA’s “Response to consultation paper on growing the Indigenous visual Arts industry” as part of the Government’s *National Indigenous Visual Arts Action Plan 2021-2025* – especially at p.8.

AAAA's Nov. 2020 Submission to The House of Representatives Standing Committee on Communications and the Arts *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*. - especially at p.10 and p.11.

Another specific issue we hope the study will deal which concerns the optimal way to achieve growth. AAAA hopes that this Study will restate the Productivity Commission's long-standing advice to government about how maximizing growth depends in large measure on the policy and regulatory frameworks in which the relevant markets operate.

As we said in our November 2020 Submission to the House of Representatives Standing Committee on Communications and the Arts - *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*:

“[the] optimal mechanism for ensuring cohesive government policy design and delivery in the ATSI visual arts and crafts sectors is high-quality policy and regulation-making that responds to well-informed customers in a transparent and competitive marketplace.

High-quality policy and regulation can't happen without high-quality decision-making, which means:

- proper prior analysis of impacts, involving Indigenous artists and parties from *all* the IVA industry, not just selected parts, and all relevant government layers,
- proper consultation – with all affected parties, including relevant government layers, and with consultation designed *after* conversations,
- proper evaluation - adhering to the Productivity Commission's newly released *Indigenous Evaluation Strategy*, especially the need for evaluation findings to be consistently used to inform all Indigenous policy and planning processes – locally, regionally, and nationally.”

We hope the Study will also *express* the ways it proposes keep an ongoing eye on the Study's recommendations – including by linking the Study recommendations to the ongoing Productivity Commission work on Closing the Gap evaluations.

In this regard, we refer you to the AAAA September 2021 response to the NIAA Discussion Paper on *Indigenous Skills, Engagement and Employment Program*, and our December 2021 response to the NIAA discussion paper on their New Remote Engagement Program, dealing with *Closing the Gap*, Objective #16.

Other issues we ask the study to examine are identified later in this response.

The main contributions this study can make:

- Reassure government that their support of ATSI arts has been fruitful and important by demonstrating (via hard data) the good work done in the last 50 years, particularly for remote art centres. Government policies and funding for the Indigenous visual art sector in remote Australia are a 50-year economic, social, and cultural success story.

The new *National Indigenous Visual Arts Action Plan 2021 – 2025* is the opportunity to build on that success by more fully encompassing the needs of *all* Indigenous artists, wherever located, and *all* stakeholders. The study can help governments make policies for further success for the *whole* ATSI visual arts and crafts sectors, in the long-term interest of the whole Australian community.

- Help decision-makers understand the latent potential in the ATSI arts sector and how that potential can be unlocked by:

Analysing existing spend to identify where improvements in efficacy of spend lie; what the tools to measure efficacy are; what processes and resources are necessary to implement such a basic discipline; and what mindset changes are required in government policy, and in the arts bureaucracy to enliven this change in approach

- Identifying the multitude of funding possibilities at various levels of government and trying to understand how visibility of this can be improved for applicants, and how co-ordination and measurement can be improved
- Identifying gaps and inequities in current spending, the addressing of which will unlock creative and commercial opportunity for Indigenous visual artists and Indigenous visual arts (IVA) participants
- Measuring the support provided
- Identifying the unique position IVA holds not only within the arts and Indigenous communities but within the broader community and the broader economy. Put another way, as set out in our submission on the IVA Growth Action Plan, the AAAA believes the lens through which IVA is viewed is inappropriately restrictive. It is viewed as a cost, not an opportunity to productively transform a whole area of the community and the economy
- Identifying the need for an increased focus on marketing, rather than advertising, especially, fit-for-purpose communications across the whole market built on and reflecting consumer needs and consumer advice,

including showcasing the many ways to buy art and support artists through multiple channels to market such as wholesale, gallery, independent, etc

- Identifying anti-competitive practices born out of ideological dogma that are restricting the growth of the industry and recommend the dismantling of these barriers to growth
- Demonstrate that the current approach to the industry, particularly at a federal level, is overwhelmingly unbalanced to the detriment of independent artists and that, whilst this is a problem, it is also an opportunity. This should be the basis for bringing an end to the current two speed system in IVA for artists, ensuring equity for all participants and that policy is developed based on a whole-of-industry view and that policy execution reflects that view
- . Indigenous Cultural Intellectual Property (ICIP) needs to be better adopted and integrated into industry practice across the whole market. Assist in building a cohesive, sensible, and executable approach to Intellectual Property issues that have plagued the industry for decades
- Assist in improving ‘agency’ for artists across the whole of the market, including training, complaints handling, compliance, authentication, digital transformation and legal
- Assist in establishing Cultural protocols of learning, with better Cultural clearance mechanics to assist becoming an artist/s

Question 2. The markets for Aboriginal and Torres Strait Islander Visual arts and crafts.

2a. Characterisation of the markets

1. Your characterisation of the market does not seem to cover the ‘fine end’ of the craft market, nor the souvenir art and crafts end, nor the international market.

This seems at odds with the acknowledged ‘impetus’ for the study – namely the House of Representatives Standing Committee on Communications and the Arts – *Inquiry and Report into Australia’s creative and cultural industries and institutions - The Indigenous Visual Arts Industry* which noted that the main concerns with inauthentic product was in the souvenir end of the market in the following terms:

“3.58 The committee is cognisant of the fact that inauthenticity is far less prevalent in the fine art sector than in the souvenir trade and that fine arts could be negatively impacted by a lack of understanding of this. Future

policies need to be designed accordingly and take care not to confuse these two different sectors of the art market in relation to this problem.”

2. Your characterisation says (p. 2) that “artists may sell their artworks ... as part of fairs”.

AAAA invites the study to closely examine the extent to which independent Indigenous artists working outside of the art centre model are in fact able to access art fairs.

We hope that the new Action Plan will begin to remedy this longstanding unfairness and hope that the study will make appropriate recommendations about this too.

We refer you to our December 2017 submission to the Museum Galleries Australia *‘Indigenous Roadmap Project’* for further detail and analysis

We also refer you in this respect to our Action Plan submission, at p. 14/15

3. Notwithstanding 2a (1) and 2a (2), we agree with how the ATSI visual arts and crafts supply chain is presented in figure 2 – at least in respect of the ‘fine end’ of the arts and crafts market for the domestic Australian market – but bearing in mind our earlier qualification of fair access to art fairs for independent Indigenous Visual Artists.
4. Other points to note on correct characterisation:
 - Many independent Indigenous, remote, regional, and urban artists have trading relationships with multiple galleries. The AAAA’s experience suggests that exclusive agreements are the exception, not the rule
 - The secondary market is also extensively served by galleries
 - Due to the flawed construction and wording of the Resale Royalty Act, resale royalty is also often triggered on the first sale to the consumer, not just on what the art market views as secondary market sales
 - The diagram does not include direct artist to consumer online platforms that artists use such as social media, and doesn’t include a major grey market platform, eBay. Both are important as they represent a significant portion of the market and if not included, the analysis will result in significant undervaluing of the market
 - The existence of networks enabling direct community-to-customer sales
 - Consumer driven expression of interest (EIO), request for quote (RFQ), request for tender (RFT) processes

2b. Other data sources:

Opportunities and sources include:

- 2021 Deloitte study commissioned by national Office for the Arts (OFTA)
- There is potential for insights via one-on-one discussions with larger galleries and with independent artists whose turnover cannot be estimated via art centres
- The AAAA may be able to facilitate these discussions, and others which could encompass roundtable discussion of pain-points, current and future trends, problem-sets, wins and successes, failures

Information on souvenir sales

- There are several major players in this area that are AAAA Members. To assist the study, the AAAA would be happy to facilitate a discussion with some of those members. This may be particularly helpful in identifying other key participants in the souvenir sector that are not AAAA members, allowing the study to scope the market more satisfactorily, including those participants operating in the grey market

3. The role of governments

Before we address your questions, there is a prior matter we want to challenge.

Your Issues paper (p.5) says

“...Through the Australia Council for the Arts (Australia Council), the Australian Government invested almost \$17.4 million in 2019-20 to support Aboriginal and Torres Strait Islander artists...”.

No such figure is in the *National Indigenous Visual Arts Action Plan 2021-2025*.

In fact, the Action Plan did not or could not specify what is spent on IVA outside of art centres.

The AAAA is concerned that the Australia Council figure is for all ATSI artists, not just ATSI **visual** artists. It goes without saying that ATSI arts is far larger than just ATSI visual arts.

Questions the AAAA wants the study to answer include:

- How much of the \$17.4 million is for Indigenous visual artists?
- What portion is going to independent artists to support their arts practices and specific initiatives associated with them?
- What is going to initiatives supporting art centres, art centre artists and specific initiatives associated with them?
- How is funding being used against supply of materials, paints, canvases and other material/operations costs vs. development of artists, skills development, supply chain, market readiness, pipeline developments and future sales.
- What is going to Indigenous visual arts promotion in general?

- How much, if any, relates to Aust Council admin costs? A split needs to be provided between monies actually reaching ATSI arts practitioners and that being used to fund Australia Council administration costs, much the same as the breakout of IVAIS funding allows analysis and understanding of what is going to central co-ordination bodies and what reaches the art centres themselves

3.1. How effective are government investments in independent artists and artists working with art centres, such as grant funding programs administered by the Australia Council and State Governments?

Long-term government funding of art centres has been reasonably effective, but it is time to grow that success.

It is a different story for Indigenous visual artists trying to make a living outside the funded art centre model. Investment in Australia's independent Indigenous visual artists is close to absent when compared to art centres.

If Australia wants to maximise Indigenous visual art market growth, it will find ways to overcome that self-defeating imbalance.

AAAA covers this ground in detail in:

Our November 2020 to the ongoing House of Representatives Standing Committee on Communications and the Arts - *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*.

See in particular, "Changing the Grant Landscape" at p.8, and "A client focused, more responsive Australia Council" at p.12 - p.14.

and in

Our December 2020 Response to the Commonwealth Government's Consultation Paper - *Growing the Indigenous Visual Arts Industry*.

AAAA appreciates that art centre funding reflects a complex mix of policy objectives. Art centre funding is both social policy and economic policy. Art centres are an exercise in strengthening communal well-being, not just income.

AAAA does not see these as 'either/or' choices. The social objectives are fundamental, and correctly regarded as working.

There are nevertheless many art centres ready to grow or capable of growing their quality and expand their access to bigger customer demand.

How could selling more higher-quality, higher-value visual art to more customers undermine the current social policy success?

How could more income for art centres do anything except benefit everyone?

Improved growth of an ethical Indigenous visual art sector is universally applauded as the right thing for Australia to aim for.

A necessary element will be to improve the efficiency and effectiveness of art centre funding.

3.2 How effective are State Govt and Australia Council?

- We need to state up front that AAAA artist members are generally highly critical of the Australia Council, its staff, and its approach to independent artists. They do not believe that it is operating in a manner which is artist centric. Artists are also concerned that the Australia Council approach to IVA is not designed with the needs, capabilities, and skills of the artist in mind to best deliver the solutions artists need.
- AAAA offers the study the opportunity to speak with artists direct on this matter, including AAAA Artist Directors, former Artist Directors and Artist Members
- We direct the study to our submissions to the current House of Representatives Standing Committee on Communications and the Arts - *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*, "Changing the Grant Landscape" at p.8, and "A client focused, more responsive Australia Council" at p.'s12-14.
- No agency for change, policy, or complaints-handling exist for independent artists, creating a siloed, uncoordinated arena of frustration and inaction or handballing to other departments and agencies creating tiredness for artists who then give up on critical issues faced by artists and by the industry
- We ask that the study investigate the matter and recommend that independent artists require a dedicated body or dedicated and discrete department within an existing body such as the Australia Council to properly deal with their needs. The AAAA has lobbied OFTA regarding this, particularly considering the striking lack of focus on independent artists in the Action Plan. AAAA is happy to meet with the study to discuss the AAAA's insights
- State Govt – AAAA have no insights but contend that if our suggestion below is put in place, then we have the basis to start to measure effectiveness right across the sector. The suggestion is:

Identify the multitude of funding possibilities at various levels of government and try to understand how visibility of these possibilities can be improved for applicants; and how co-ordination and measurement can be improved

Effectiveness of IVAIS Program

- See our email dated 21 October 2021 to the PC regarding the efficacy of IVAIS spend administered by OFTA.

- The AAAA also made a number of constructive and executable suggestions in the previous submissions. See:
- Our November 2020 House of Representatives Standing Committee on Communications and the Arts - *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*, at p.5-12.
- Our December 2020
- The AAAA would be delighted to discuss our October email and our previous suggestions further
- The AAAA also proposes to send by separate correspondence further analyses to the Commission on matters associated with this topic

Further comment on the role of government

- The AAAA, particularly its artist members, do not feel that copyright law gives Indigenous creators sufficient or appropriate protection for their IP, bearing in mind that their IP relates not only to their artistic creation, but to the world's oldest living culture. AAAA contends that it is important that the deficiencies in the current legislation and legal frameworks be dealt with, and that resource be made available to do so. AAAA would be happy to talk to the study about digital transformation, authenticity, and supply chain issues in this IP context.
- The better protection envisaged above can come through newly created IP protections administered under IP Australia as a stand-alone protection system with features such as compliance, proof, auditing abilities, infringement, and complaints - for artists, communities, and consumers.
- Similarly, better protections are needed around image and licensing issues, payment structuring, fake images, appropriation, and misappropriation, including commercial suppliers to consumers.
- The Resale Royalty Act requires amendment. Its design and implementation have had and continue to have deleterious impacts on artists and galleries. The AAAA has provided the Minister with detailed recommendations and reasoning on amendments to the Act
- We would be happy to discuss the IP and the RRS issues further with the study and to provide the study with a copy of our recommendations as regards the Resale Royalty Act. This work adds to the already comprehensive work in our December 2020 submission to the Action Plan paper on growing the Indigenous Visual Arts Industry, at p. 19 – 25.

3.3 How can government programs be improved?

In addition to our comments above and the detailed recommendations contained in our various submissions, we add that the key improvement would be to improve the administration of the IVAIS program, including by recognizing that the “Indigenous

Visual Arts Industry” includes Indigenous artists working outside the art centre model.

The Government’s new *Action Plan for growing the National Indigenous Visual Arts 2021-2025* is encouraging. It correctly defines the structure of the sector, p. 7.

The challenge is for funding administration to reflect that definition.

AAAA asks this Study to:

1. Analyze the way IVAIS has been administered, measured against:
 - IVAIS Program claims on the OFTA website,
 - Commonwealth legislation, and
 - Commonwealth Guidelines,
2. Form an opinion on the compliance of IVAIS administration with ‘the rules’,
3. Make appropriate recommendations.

Questions 4, 5, and 6 - Authenticity

The AAAA has spent 22 years grappling with the complex and emotive issue of ‘authenticity’.

In the last 5 years AAAA has produced 5 documents which specifically address your questions 4, 5, and 6, and 3 other documents which provide useful context:

We enclose a link to, or attach a copy of, the relevant AAAA documents and ask that each be considered in connection with your questions:

- 4) What is (in)authenticity and how is it determined?
- 5) What are the effects of inauthentic arts and crafts?,and
- 6) What policy options are there to address inauthentic arts and crafts?

November 2017

House of Representatives Standing Committee on Indigenous Affairs Inquiry -*The growing presence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise for sale across Australia.*

Submission #52

Supplementary submission #52.1

https://www.aph.gov.au/Parliamentary_Business/Committees/House/Indigenous_Affairs/The_growing_presence_of_inauthentic_Aboriginal_and_Torres_Strait_Islander_style_art_and_craft/Submissions

December 2017

Response to Issues Paper, Museums Galleries Australia, *INDIGENOUS ROADMAP PROJECT*

Museums Galleries Australia wanted to improve engagement with Indigenous people and invited AAAA to contribute to the development of a 10-year Roadmap, focusing on how Indigenous cultures and histories are represented in museums/galleries. The Issues Paper asked – what should be covered in the Roadmap, and how should associated issues be addressed.

See attachment.

February 2019

Response to National Indigenous Australians Cultural Authority, Discussion Paper.

This was submitted to the NIACA's Interim Secretariat on behalf of AAAA's Aboriginal Cultural Council (ACC) following ACC's consultation with the AAAA's artists and other Indigenous members.

It is especially relevant to your question 4.3 - Who should have authority to make judgments regarding authenticity of ATSI arts?

See attachment.

August 2019

Senate Standing Committee on Environment and Communications, *Inquiry on Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019*

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/IndigCulturalExpression/Submissions

Submission # 11

November 2020

House of Representatives Standing Committee on Communications and the Arts - *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*

See attachment

December 2020

Response to the Commonwealth Government's Consultation Paper - *Growing the Indigenous Visual Arts Industry*.

See attachment

September 2021

The National Indigenous Australians Agency

Response to NIAA Discussion Paper on Indigenous Skills, Engagement and Employment Program (ISEP)

See attachment.

December 2021

The National Indigenous Australians Agency

Response To NIAA Discussion Paper New Remote Engagement Program

See attachment.

Other comments on 'authenticity' from an Indigenous AAAA member follow:

- authenticity has been set in a Western legal framework and context rather than a Cultural context, meaning that asserting authenticity currently is driven by industry and consumer markets as opposed to Cultural storytelling and intergenerational knowledge systems, and transfers through learnings and orality. 'Industry to consumer' is deciding on what is deemed authentic as against Cultural traditions and complex systems. This creates a paradox of what is real vs what is not real

- Provenance and authenticity should be determined by the creators as opposed to industry. This means if an Aboriginal and Torres Strait islander states that they are the creators, then it can be asserted that this is authentic to storytelling and traditions as opposed to industry certification
- There may be space to include geographical authenticity instead of iconography being geographically locked or recognised through certain communities only, rather than wider adoption of symbols unrelated to other community groups
- Authenticity doesn't matter except for 'industry to consumer' being able to prove origins and creators. Setting cultural context to storytelling and transferring knowledges through systems has happened for time immemorial over fire, ceremony, dance, song, yarning, roles and responsibilities and custodianships; however, it is 'industry and consumer' that has trouble reconciling on Cultural assets (artworks), perhaps because it looks for proof of creator, not cultural accuracies
- Cultural accuracies will become another subset of complexities that will need to be addressed
- The emphasis may shift from what is 'real' vs 'what is Culturally normal practice'
- Another way to see this is or another area to explore is when a mainstream artwork comes onto the market, is there as much attention to authenticity and 'who' created or proof? Even the greatest of artists had 'other' artworks done 'in the name of'... with understudies. Not many questions get asked about proving if they created the work even though there are no Cultural traditions over multiple generations and lore, custodianships etc
- Do the above artists also have to obtain as many permissions and requirements to 'proving' their artwork's validity? Culturally loading artists to seek permissions is great but also unfair as it can be deemed as an attack on identity. Further considerations may include stolen generations and people who have recently discovered their identity and commencement of their own journey. But we also need to remember who this is for? Is this for strengthening Culture against appropriation or for consumers needing further explanation as to who and what is Indigenous? This can be seen as creating more barriers and obstacles for emerging artists and industry, which becomes an unfair burden
- Further considerations need to be given to the 'why' of Aboriginal art. Does it come onto the market for consumption and purchase as national identity or appreciation, or for aesthetic and décor value, or is it an extension of Culture, Cultural contexts, and nuances connecting artists and communities? If it is 'just a painting' maybe authentication might not be needed, but if it is an important Cultural work maybe we need to rethink what 'authentic' means and looks like? A new set of questions to validate 'why' it is 'authentic' may be needed
- Perhaps it will become appropriate to include information such as 'Culturally cleared through XX community, bound by traditional stories'

What else could be done to increase consumer awareness and demand for ethically produced art? Would further education campaigns be effective? What about labelling schemes or requirements?

- Education and training for artists - efficiencies and business skills
- Education for consumers
- Education for government and corporates including:
 - using Culture for benefit but which also restricts and denies access for community and artist benefit, through poor decision-making
 - using Culture and art to make sense of reconciliation
 - using Culture and art to access targeted Indigenous procurement policies (IPP) tendering requirements for spend 1-3%, and employment with little to no auditing or accountability for measured outcomes, spend or employment denies access from IPP to the targeted outcome recipients and original purpose of policies
 - Placemaking by using Culture to tell stories of national identity, consulting with community groups for proprietary rights, converting into place-based identity strategies and denying equity in the storytelling. Using stories and identity to sell ideologies of ‘connections to place’ and telling community ‘we see them and their stories’ doesn’t uplift people.
- Develop and implant ethical charters or terms of engagement with community from government and corporate, with compliance, accountability and productivity results and actions supported by reporting and a watchdog

What are the limits of the existing intellectual property protections? How can existing intellectual property laws be amended to improve protections for Indigenous Cultural and Intellectual Property or do we need standalone legislation?

See comments on this topic which are set out as part of question 7, but some thoughts in the meantime are:

- Need standalone policies, advocacy, agency, framework, templates
- Need protections, compliance, complaints and mitigations triggers
- All agencies need to come together to be housed under one place for Culture and arts
- Need decentralised and non-westernised or simplified legal templates, education resources, and ‘help and call’ centres
- Need artist concierge service and ongoing training supports

Other highly relevant contributions on ‘authenticity’

AAAA invites this Study to consider another submission to the 2017 House of Representatives Standing Committee on Indigenous Affairs Inquiry -*The growing*

presence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise for sale across Australia.

Professor Jon Altman, the Foundation Director for Aboriginal Economic Policy Research at the Australian National University addresses many matters relevant to this Study. In particular, he does this as an independent expert who has:

“...examined the issue of ‘authenticity’ on many occasions in the last three decades as an academic researcher advising government and its agencies, most significantly as chair of the federal review of the Aboriginal Arts and Crafts Industry in 1989 and as a consultant appointed to develop an Indigenous Arts Strategy for the NT in 2003. I have also provided submission and expert evidence to this Committee’s inquiry into Indigenous Arts and Culture in 1995 (that was not completed owing to a change in government in 1996); expert advice as a consultant in 1999 to the Aboriginal and Torres Strait Islander Commission (ATSIC) on the proposed development on a National Label of Authenticity by the National Indigenous Arts Advocacy Agency (that did not proceed); academic research for the Australian Competition and Consumer Commission (ACCC) in 2001 on trade practices issue of relevance to the Indigenous visual arts sector; and a submission in 2006 to the ... Senate Inquiry into Australia’s Indigenous visual arts and craft sector.

My recent research in this area has focused on the escalating challenges of doing Indigenous arts business in remote Australia after the Global Financial Crisis and changes to superannuation laws. I remain engaged in seeking to understand how the free market, the regulatory state and artist control can be productively mixed to ensure sound outcomes for artists.”

https://www.aph.gov.au/Parliamentary_Business/Committees/House/Indigenous_Affairs/The_growing_presence_of_inauthentic_Aboriginal_and_Torres_Strait_Islander_style_art_and_craft/Submissions

See #118

The Report of that Inquiry is the “impetus of this study” (p.1)

The Altman submission is an excellent insight:

- into the ‘impetus’ for the Inquiry itself,
- on the previous attempt at a labelling system,
- on ‘authenticity’, and,
- on the nature of the ATSI visual art markets.

As noted in the Issues paper, there have been multiple attempts dating back to the early 2000s to address and fix this matter and none have succeeded. The reasons for failure include those set out in the Issues paper, but the study should not lose sight of the fact

that ATSI people have historically been unable to agree amongst themselves and that current practices by ATSI artists in the market take a broad, broad range of approaches to the matter, further underlying the challenge of achieving conformity.

This has and will continue to make the crafting of an overall and detailed solution extremely problematic. AAAA's firm view, however, remains that whilst this complexity is being dealt with, the Government should proceed with employing existing legislation, as they did in the Birubi case, to stamp out a significant portion of the abuse. Please refer to AAAA's Action Plan response, at p.10 and the Nov 2020 submission to the House of Representatives Inquiry, at p.7.

This matter is part of the scope of the Federal Govt's Action Plan for growing the ATSI arts sector. AAAA asks the study to recommend that a working group with appropriate and broad industry experience along with general cultural representation be established.

The AAAA would be happy to discuss with the study the wide ranging and hard-won experience embodied in this AAAA response. Formulating questions that matter to the study seems like a sensible way for the study to conduct its research in a time-effective way.

7 What issues arise in the interaction between artists and dealers

Nurturing fair and ethical dealings

Fair and ethical dealings are just that. Characteristics one would expect to see when it comes to ATSI art are addressed in the Association's Code of Ethics and Aboriginal Art Code. General principles include:

- Respect for the artist and their culture
- Respect for the artist's legal and moral rights
- Dealing with the artist honestly and openly
- Appropriate remuneration of the artist and the gallerist, art centre or dealer ("the dealer") bearing in mind:
 - Expected retail or wholesale price
 - Is the artwork acquired by the dealer or consigned?
 - If consigned, are advances paid against a subsequent sale?
 - What level of support does the dealer provide, including materials, workspace, meals and family support?
 - Is the artist also a business owner, such as in an art centre
 - What funding does the dealer receive to mitigate running costs
- Reciprocal respect from the artist to the dealer

A written contract formally records expectations but cannot be mandatory for the simple reason that many ATSI artists, particularly from remote areas, do not want to enter into a written contract. Reasons include artists being distrustful of contracts, generally because

of prior experience where contracts have been used to remove freedoms to express their talent, where and with whatever dealer they choose at the time; and the simple fact that a written contract is a non-Indigenous construct. One Indigenous member commented:

Written contracts for many artists are problematic because they do not have the capabilities, resources or understanding of what is in the contracts, which leads to further exploitation. Examples of this can include contracts that have been signed by artists ascribing all copyrights over to suppliers for current and future works. Another example can be if an artist is exclusively represented, including art centres, which can severely limit their future earning capacities from other opportunities. This is a fundamental removal of self-determination and an artist's rights to paint how, when, where, they want, and can become a restriction of trade.

Better education is needed for artists in any dealings, not just with dealers. The 'fair' and 'ethical' will come from artist/s having better resources, skills, understandings, and negotiations, including understanding of how to maximise the value of their art via 'other' avenues including licensing, royalties, ethics and fair payment structures.

Issues with fair and ethical dealings extend well beyond the artist dealer relationship. Based on firsthand insights from its broad member base, the Association contends that Government and corporate procurement of artworks for policies, promotional, statements, engagement remain at an all-time ethical low, and include removal of artists rights through contracts, ownerships, earning rights such as royalties and licensing, minimal payments, payments housed in a tea, sugar and flour bartering economy create exploitive behaviours.

The AAAA would be happy to help the study be put in contact with its members to discuss and explain the points above.

Ethical trade can be nurtured by an appropriately constituted, balanced and well-funded IAC, which Board and management has the necessarily diverse skill sets and broad experience together with the financial backing to play a constructive role in the industry, particularly bearing in mind the sector's diversity.

Looking at and actioning the following would also assist:

- Developing better advocacy skills
- Training
- Roadshows
- Trade shows
- Access to global markets
- Market education including government and corporate purchasing
- Legal and contract education
- Appropriately designed and fit for purpose IP and ICIP protections
- ACCC action and consumer law complaint follow ups.

Other matters to do with ethics

The AAAA draws information from a broad membership base comprised of remote artists, regional and urban artists, gallerists, wholesale dealers and specialists in the souvenir sector. The gallerists and dealers include ATSI people. As a whole, the feedback of membership, artist and dealer, regarding the prevalence of unethical behaviour is:

- unethical dealings do occur, particularly in the souvenir area, but they are not prevalent, as is often portrayed in the press or by participants with ideological agendas to pursue
- real challenges do exist for urban and regional artists, not just remote artists.
- Urban and regional artists challenges often revolve around
 - how they are represented in actuality versus their prior expectations or promises made by gallerists; and
 - accounting for sold artworks
- Remote artist issues overwhelmingly relate to issues of remuneration and of treatment by the dealer, independent or art centre, and of unfair licensing deals. Social media is an emerging challenge
- Remote, urban and regional artists commonly express concerns, and those concerns continue to grow, about Indigenous IP issues including inappropriate use of imagery by another Indigenous artist. That is, matters of ethics or challenges regarding interpretations of ethics are not restricted to transactions between dealer and artist
- Artists and dealers alike are incredibly frustrated at the negative way the industry/industry participants are portrayed in the press and the political mileage often sought via these portrayals. Common comments from artists include that non-Indigenous people, including industry participants, are setting artist against artist and artist against dealer to advance their own ideological agendas

The matter of merits and costs of amending Australian Consumer Law to deal with unfair treatment requires consideration by legal experts with a deep understanding of our diverse industry. The AAAA can comment as follows though:

- Elements of existing Consumer Law can already be used to deal with a significant number of issues faced. The AAAA is frustrated that this has not been done. Put simply, executable and affordable legal actions are being avoided while Inquiry after Inquiry looks for a golden bullet to solve everything
- The AAAA is on record in commenting that Senator Hanson-Young's draft legislation was guilty of overreach in trying to find a solution for complex cultural issues under Consumer Law. We question going down the same route. We refer to our ideas on this in our previous submissions:
 - see our Nov 2020 Submission to the House of Representatives, at p7
 - see our Dec 2020 Response to the Government's Growth Action Plan consultation, at p.10

- our Nov. 2017 House of Representatives Standing Committee on Indigenous Affairs Inquiry -*The growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia.*
- Our submission (#11) to the Senate Standing Committee on Environment and Communications, Inquiry on *Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019*

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/IndigCulturalExpression/Submissions

- The Association also notes that trying to retrofit a law set up for a very different purpose is generally unwise
- The Association expects that a suite of legislative measures reaching across consumer law, IP law and bespoke cultural legislation will ultimately be necessary. This is in addition to an Industry Art Code governance and administration that can deliver what the industry needs (see below).
- This legislation needs to be steered by a whole-of-industry panel which understands live needs and issues, including futureproofing ATSI arts beyond current fast-fashion trends and nationalism. Such a panel can:
 - bring the understanding of the value of what ATSI arts brings to community beyond the immediate consumption of artwork and the economics behind it.
 - see proprietary rights asserted and affirmed mean community benefits from stories and identity beyond a one-time purchase.
 - see a real uplift in social and economic outcomes happen through a sense of nationalism and identity, through the story we tell about ourselves and what this means for community betterment.

The Association was a strong proponent of the so-called Alice Springs Roundtable that was initially scheduled for April 2020. Its primary focus was to be ethics in the industry, including the role and performance of the IAC. That roundtable was to be led by what artists wanted when it came to ethics and an industry regulator, not what the IAC, the AAAA, DesArt or any other interest group wanted.

The reasoning was that it was time that matters of ethics be led by bottom-up feedback, suggestions, and experiences of artists, not the beliefs and prejudices of industry bodies.

Unfortunately, Covid saw that forum cancelled.

OFTA recently confirmed to the AAAA that there will be no replacement forum.

The AAAA believes that this is a huge mistake and that, to design the right industry body responsible for ethics, artists must lead the thinking.

A Forum can and should take place, perhaps using digital conferencing, and become a regular event reflecting needs-based input and analysis of industry and government, NIAA, IAC etc.

Bearing the above in mind, the AAAA has for some years called for changes to the IAC, including in board representation, the breadth of knowledge and skill sets of the Board and staff, the programs run by the IAC, the way the Code has been enforced (or not enforced, depending on the case) and of its insufficient funding. The Association has repeatedly sought to engage with the IAC on these matters but to no avail. The AAAA has also raised its concerns with OFTA. No progress has been made.

The Association is on record as supporting a mandatory code; ours is mandatory for our members. Our issues as regards any industry mandatory code remain:

- If it to be administered by the IAC, the Association is of the opinion that fundamental changes must be made to the IAC's governance (see above)
- For a mandatory code to have meaning, it must have the necessary funding to ensure it can be enforced. Only through enforcement can a code serve and protect artists, communities, industry and consumers.

The AAAA is not aware of any educative or advocacy initiatives of substance that have positively impacted consumer behaviour of the perception of the industry.

Our position remains, that the place to start in successfully dealing with these issues is the artist, as was envisaged to happen in April 2020. Meantime, the AAAA's or anyone else's opinion is irrelevant and the constant canvassing for opinions on the matter redundant.

The AAAA would be happy to discuss with the PC the matters in section 7.

8 How can the contribution arts and crafts make to remote communities be sustained?

AAAA's ideas are canvased in all our above-listed documents. See especially:

November 2020 House of Representatives Standing Committee on Communications and the Arts - *Inquiry and Report into Australia's creative and cultural industries and institutions - The Indigenous Visual Arts Industry*

December 2020 Response to the Commonwealth Government's Consultation Paper - *Growing the Indigenous Visual Arts Industry*.

December 2017 Response to Issues Paper, Museums Galleries Australia, *INDIGENOUS ROADMAP PROJECT*

Section 9 – Engagement - Who and How

AAAA are generally happy with the study's engagement practice.

We note though that it isn't always about seeking new ideas. There is a real case for properly understanding, considering, and addressing ideas that organisations such as the AAAA have been making for some years. Otherwise, this study will go the way of tens that have come before it and be parked unread and unactioned on a shelf in parliament house.

We invite the study to take up our offers to discuss the various matters we have raised.

At a more general level, there are long-held and deeply felt concerns over the typical consultation processes used by government agencies. An example is Q7., which states ***What do 'fair' and 'ethical' dealings between artists and dealers look like?*** The underlying implication is that the problem is between only artists and dealers and leaves behind ethical problems with consumers and procurement meaning these problems don't even get voiced into ethical problems, rather, it is the dealers who are 'unethical'.

Perhaps the fundamental problem is this approach to consultation. Perhaps we need to bring paper and pens to a roundtable on a regular basis to capture all problems, not just assumed problems, then go out to consultation with an industry-led committee for accountability and productivity against government policy design. Do not approach with the predetermined questions, leave blank. Begin with conversation. Then have consultation

Conclusion

The study is entitled to wonder if the issues which AAAA asks you to focus on are the correct priorities.

Rather than simply restating our assertions, we instead extract parts of the Conclusion in the Cooperative Research Centre for Remote Economic Participation Working Paper CW010, 2013, Ninti One Limited *Aboriginal and Torres Strait Islander Art Economies Project: Literature review*: (at p.20)

“... the CRC-REP’s Aboriginal and Torres Strait Islander Art Economies Project has organised research that encompasses the three primary zones of activity within the sector – artists, agents and audiences. [and]... a number of findings have emerged:

- *Scope and scale of the sector*: existing measures of the size of, and activity within, the sector are too narrow, variable and/or contested to provide detailed understandings of the financial forces at work.
- *Remote area enterprise*: ... Only fragmented and limited information exists on what makes art centres ‘work’ and how they might be made more robust.
- *Art outside art centres*: a growing number of artists are choosing a growing number of ways to engage with the art industry; there is no understanding of the scope, scale and motivations of this sector and its implications for existing business practices.
- *Marketing and consumer dynamics*: existing analyses of consumers are based on either auction sales or art event attendance; more detailed understanding of buyer motivation and behaviour is required and is likely to provide valuable information and resources to the sector.
- *E-commerce, licensing, and merchandising*: identified as an area of potential opportunity, but with little research into, or understanding about or resources available, further investigation is urgently needed.”

AAAA contends that those research findings are totally consistent with the issues which AAAA asks the study to focus on.

A main contribution that this Study can make is to give governments confidence that a well-run and well-regulated IVA industry, which is already a good economic, Cultural and social platform, can be improved and grown to the benefit of all Australians.

AAAA stands ready to share in that responsibility.

We hope you will invite us into the conversation and accept our offer to discuss the various issues raised in this response.

Matthew Everitt
President

**House of Representatives Standing Committee on Indigenous
Affairs**

Inquiry

**The growing presence of inauthentic Aboriginal and Torres Strait
Islander 'style' art and craft products and merchandise for sale
across Australia**

November 2017

Executive Summary

- The Aboriginal Art Association of Australia serves and represents producers, promoters and supporters of Aboriginal art and cultures. It has spent 19 years considering and advising on ‘authenticity’ and on promoting ethical trade conduct.
- A key event in those 19 years was the failed 1999 attempt by the (now defunct) National Indigenous Arts Advocacy Association to introduce a Label of Authenticity, without the necessary research or consultation with key stakeholders.
- The key messages for this Inquiry from that failed attempt are:
 - Get the decision-making process right; include *all* aboriginal artists, and engage the commercial sector’s consumer knowledge properly.
 - Distinguish between ‘Aboriginal Fine art and craft’, and ‘ATSI style art, craft products, and merchandise for the tourist market’. The inauthentic product is essentially in that tourist market segment.
 - Target new or expanded labelling law, and enforcement, at the correct segment - the tourist sector.
 - Resource enforcement properly; supported by improved information content and delivery to potential tourist customers, to retailers, and their purchasing agents.
- There is no safe way to avoid the rigorous research of the range of issues that are fundamentally important to any regulatory authentication system’s workability.
- Proper enforcement must be properly resourced. Costs of enforcement need to be known up-front, one reason for proper prior analysis of costs and impacts.

Definitions and current arrangements

- A fundamental distinction is between ‘Aboriginal fine art’ and ‘manufactured tourist art’.
- A useful and important distinction is between ‘*Indigenous and Indigenous-licensed product*’, and ‘*imitations and unlicensed product*’. A workable

authentication system for manufactured ATSI style souvenirs would differentiate indigenous and indigenous licensed artworks from imitations and unlicensed products.

- “The growing presence of inauthentic ATSI style art and craft products and merchandise” should be understood as applying to tourist product, not to Aboriginal fine art.
- AAAA agrees there is a material amount of imitations and unlicensed product in ATSI style manufactured souvenirs and giftware in tourist centres, and that current law is either inadequate or not adequately enforced.
- In AAAA’s view, there is not a meaningful amount of inauthentic art and craft in the Aboriginal fine art market. There is a successful Certificate of Provenance system in place. Current legal arrangements are adequate, but the 2007 Senate Inquiry recommendations to improve demand by improving consumer confidence in art content and trade conduct, remains a work in progress. The well-intentioned but clumsily-worded “fake art” campaign is damaging already fragile consumer confidence in Aboriginal fine art.

Why an authentication system could now work effectively

Previous barriers can be overcome by:

- Focussing effort on the ‘correct’ product market.
- Designing good-quality regulation using good-quality decision-making process that complies fully and faithfully with the Commonwealth Government’s own Best Practice Regulation Making Rules.
- Well-resourced, well-targeted enforcement, starting with knowledge of likely costs, gleaned from good prior analysis and consultation.
- Making the overarching objective the proper enforcement of complete and accurate labelling of ATSI style art and craft product and merchandise in the tourist market.
- Proper labelling, proper licensing, proper education of consumers, wholesalers, producers and retailers, and proper resourcing of properly targeted enforcement is a better option than trying to prevent import of imitation or unlicensed souvenir product.
- Total prohibition at the border is unrealistic, but even if it could work, it would close down tourist retail outlets which are needed by aboriginal artists to distribute authentic product. That’s why (properly enforced) accurate labels that specify ‘Aboriginal made’, ‘Aboriginal designed’, and

'not made or designed by an Aboriginal person' make more sense than banning inauthentic tourist product altogether.

- Protecting properly licenced product. A key risk is that a narrow view might result in properly licensed product (which earns indigenous artists significant royalty income) being excluded from sale on the basis that it was not directly produced by an indigenous person.
- Instead of prohibition, encourage the Department for the Arts to help the whole sector to finish the job of building a fully representative, properly-functioning, properly funded, properly marketed, Indigenous Art Code, and use that more effective I A Code to encourage tourism retailers and buyers to move up the value chain, based on well-informed *demand* from properly informed consumers and retailers, but supported by proper enforcement of sensible labelling regulation.
- Any scheme to identify authentic product and remove culturally inappropriate product from any part of the art and craft market must be supported and promoted by a broad industry alliance.
- AAAA remains ready to contribute at the decision-making table – at the design stage. We want to help build the broad industry alliance. Decision-making should involve people with market knowledge and industry experience: - in marketing; in aboriginal art practice; who buys Aboriginal art and craft; how Aboriginal art and craft comes to market; and, especially, people who understand Aboriginal art customers.
- The scheme must become synonymous with branding that customers can trust and seek out because it guarantees that Aboriginal artists will benefit.
- It must be designed so that the consumer is not turned away from Aboriginal art or craft because it is perceived as too problematic.

The Aboriginal Art Association of Australia

Because it exists to serve and represent producers, promoters or supporters of Aboriginal Art, and the cultures that nurture it, the Aboriginal Art Association of Australia Ltd has grappled with the complex and emotive issues of ‘authenticity’ and the promotion of ethical trade practice for all of its 19 years.

AAAA is a not-for-profit, member-based, self-funded organisation with an honorary Board elected periodically by ballot of members. We are now fully constituted as a national and international industry-wide body, representing Indigenous Artists (independent and Art Centre), Galleries, Dealers, Art Centres and Licensors.

The full suite of AAAA objectives is in our Constitution, at S. 3. (<http://aboriginalart.org.au/aaaa/wp-content/uploads/2016/10/Constitution-of-Aboriginal-Art-Association-of-Australia-Ltd.pdf>). AAAA’s key objectives in the context of this Inquiry are:

- Foster a commitment to excellence in art-content and trade-conduct;
- Foster consumer understanding, trust, and confidence in Aboriginal Art;
- Assist the development and promotion of a standard for authentication of Aboriginal Artworks.

Learning from a previous attempt at a Label of Authenticity

We begin with what we see, in this context, as the most relevant event in our 19 years, namely, the unsuccessful attempt in 2000 by the (now defunct) National Indigenous Arts Advocacy Association to secure sector support for a Label of Authenticity.

AAAA says there is a lot that this Inquiry can learn from that attempt.

We highlight here the key ‘learning’, and ask that this be the subject of a recommendation to decision-makers: – ‘take enough time and money to get the regulatory and policy analysis and consultation right, and provide enough resources to ensure proper enforcement’.

The quality (and viability) of any authentication system will reflect the quality of the decision-making. There is no safe way to avoid the right level of rigorous research at the

right time and including the right people about the range of issues that are of fundamental importance to any authentication system's workability.

In addition, an effective authentication system must make enforcement practically possible, and be accompanied by the dedicated resources necessary to make that happen. Government needs to know, up front, what the costs will be, another reason for rigorous prior analysis of likely impacts and costs.

Terms of Reference 1 and 2 - Definitions and Current Licensing Arrangements

The Committee is to inquire and report on "the growing presence" of "inauthentic ATSI 'style' art and craft products and merchandise".

AAAA agrees there has long been a material presence of inauthentic ATSI 'style' manufactured giftware and souvenirs in tourist centres around Australia.

Subject to the following qualification, AAAA does not agree that there is a material presence of inauthentic Aboriginal fine art and craft.

The qualification is that determining authenticity of Aboriginal fine art sometimes reflects a judgment based on context and circumstances. Attribution is not cut and dried, demonstrated by the fact that experts in the field have developed and use a 'sliding scale of attribution' to manage this cultural and evolutionary complexity.

It is now regarded as acceptable to have works which are assisted, but still culturally authentic, if the degree of assistance is reasonably known to a purchaser, but recognising that 'measurement' can come down to experience and judgment. We set out at p. 8 the definitions or protocols used to help form such judgments.

Collaborative artworks made by multiple artists are currently highly sought-after.

That is to be contrasted with works in the market sold as wholly the work of a single artist, but which are not. The fraud here is the passing off of the works as by a single artist - not accurately describing the works. This has happened, but, in our experience, still not to a material degree.

The Inquiry's Terms of Reference do seem to acknowledge the important distinction between 'fine art' on the one hand, and 'ATSI style art, craft and merchandise for the tourist trade' on the other. If so, the Inquiry has correctly avoided one of the key problems explaining the previous failed attempt at a Label of Authenticity.

It is appropriate to spell out our reasoning:

There is a longstanding distinction between fine art and tourist art, while recognising that there is considerable overlap between the two categories.

It is important to distinguish between individual art practitioners and art manufacturers, the key differentiating factor being the scale and the extent of non-aboriginal involvement; and further to distinguish "cultural appropriation", that is, the exploitative adoption of elements from another culture without consent.

The 1999/2000 attempt to introduce a label of authenticity failed, in part, because it failed to recognise the distinction between fine art and manufactured tourist art. This is not just AAAA's view. Professor Jon Altman is a leading academic and regulatory economist in this field¹, and recognised that a problem with the NIAAA Label was its failure to make that distinction.

Professor Altman referred to another problem in the same article. The NIAAA attempt wrongly conflated authenticity with aboriginal authorship, an issue we return to in response to specific Inquiry questions.

Several of his conclusions are instructive for this Inquiry:

"...It is unclear if an authenticity label on Indigenous fine art is either required or desirable."

"Nevertheless, an authenticity label *on manufactured products* could be a very useful promotional tool to differentiate Indigenous and Indigenous-licensed product from imitations and unlicensed product". (Our emphasis)

We invite the Inquiry to also consider The Department of Aboriginal Affairs, 1989, *"The Aboriginal Arts and Craft Industry: Report of the Review Committee"*, AGPS, Canberra.

¹ Professor Jon Altman *"The Indigenous visual arts industry: Issues and prospects for the next decade"*, Artlink, Vol 20, p 86 at p 92ff.

AAAA understands that that Review did not recommend the establishment of a 'label of authenticity'. There was a view that such an instrument would be costly and inefficient, given the complexity of the Aboriginal Arts industry, and that scarce resources could be better spent to strengthen arts organisations at community and local level.

A predecessor to the now Department for the Arts offered the following observations about the why the label of authenticity failed and how to overcome that failure to the 2007 Senate Inquiry – *"Indigenous Art - Securing the Future"*, reported at 10.18:

"DCITA observed:

"The label was not successful for a number of reasons, including being expensive and administratively complex and not distinguishing between fine art and manufactured tourist art. As such it did not have broad support across the sector. If a national Indigenous art label was to be introduced in Australia, significant research and consultation would be necessary to ensure that it was developed appropriately and was supported by Indigenous artists and art centres."

Why would any authentication system work now?

AAAA argues that previous barriers may now be able to be overcome with new regulation, but only by focusing on the correct market products and sector, namely imitation and unlicensed souvenirs in the tourist market; and only if underpinned by a rigorous regulatory analysis of likely costs and benefits, and then properly resourced to enable proper monitoring and proper enforcement, all of which will have to be supported by better information going to potential tourism consumers and tourism retailers, and by a broad industry alliance.

AAAA has always, and still, supports a proper analysis and consultation to make workable rules to ban the unlicensed reproduction of Aboriginal imagery on fake souvenirs.

It is appropriate for AAAA to offer a definition of authentic 'art, craft products, and merchandise'.

Elements of a reasonable definition of 'art and craft product and merchandise' would include:

Aboriginal or Torres Strait Islander item created in Australia by a member of the Aboriginal and/or Torres Strait Islander community; or

Aboriginal or Torres Strait Islander item created either in Australia or outside of Australia under a commercially acceptable licensing agreement by a member of the Aboriginal and/or Torres Strait Islander community,

and:

Aboriginal or Torres Strait Islander item clearly labelled to exactly define the following: designer, craftsman/manufacturer, artwork application and locations of each process. Examples of Transparent Commerce Markings could be: ‘Designed in Australia by xxxxx’; ‘made in China under license by yyyyy’; ‘royalties paid to the artist’.

In our view, the key aspect of a workable authentication system is to *enforce complete and accurate labelling*. We offer an example:

Example 1.

Australian Indigenous Artists create an original Artwork; that artwork/design is licensed for reproduction. The reproduction is hand painted in Indonesia.

This work is currently labelled as Aboriginal Artwork, Hand Painted, both of which are true but deceptively incomplete.

We stress again our view that, for an authenticity labelling system to be effective, there must be a ‘separation’ of Aboriginal fine art from other souvenir style cultural items and merchandise. The latter items are the source of essentially all problematic material.

A current demonstration of why it is necessary to make this distinction is that the well-intended but poorly worded “Fake Art” campaign has and continues to harm customer confidence in the Aboriginal fine art market just by its title alone.

It is also appropriate to recognize, in relation to Fine Art in general, that ‘authenticity’ in the non-indigenous fine art market is far more problematic than in the Aboriginal fine

art market. Any policy dealing with fakes in the Fine Art market should be universal, and not be discriminatory or paternalistic towards Aboriginal fine art.

A summary of licensing arrangements

- Current licensing laws are generally satisfactory and universal for Aboriginal fine art and craft. AAAA stipulates that members provide a Certificate of Provenance which provides all pertinent information for fine art over \$1000. IAC Signatories have the same obligation, applicable at \$250. The IAC limit is aimed to also include the souvenir market. AAAA's threshold is aimed at the fine art market.
- Current laws are inadequate in relation to the consumer information about production, distribution, selling and reselling of Aboriginal and Torres Strait Islander craft products and merchandise in the tourist trade.
- The flourishing, but still fragile, Aboriginal fine art market is arguably the most successful self-managed economic development in Aboriginal and Torres Strait Islander Communities. That success must not be undermined by new laws driven by anti-competitive motives.
- Subject to that caveat, a complete overhaul of labelling laws is essential.
- We ask the Inquiry to recommend clear, concise and comprehensive labelling requirements for souvenir products and giftware. If a product is properly licensed – with royalties going to the artist, but manufactured overseas, this should be very clearly stated on the packaging and maybe product (tag) itself. If the product is manufactured in Australia, or hand made by Indigenous Artists, this should be clearly marked along with the appropriate Made in Australia logo.
- If the product is using designs meant to look Indigenous but not actually indigenous (passing off), or where unlicensed product such as a boomerang or didgeridoo is entirely manufactured overseas, then they should either be banned from import, or labelling made transparent, complete and accurate, and then properly enforced, as outlined above. We return to this important policy choice between total prohibition and proper licensing, properly enforced, later in this submission.

The Inquiry is to report on “inauthentic ATSI style art and craft products and merchandise”.

Even if the focus is to be on such products *in tourist markets*, it may nevertheless assist the Inquiry if we offer the definitions which AAAA take to be the working definitions used in the Aboriginal fine art and craft sector:

- Authenticity of provenance means that the origin or authorship of a work of art has been correctly identified.
- Cultural authenticity, or authenticity of style or tradition, is concerned with whether a work is a genuine expression of an artistic tradition, even when the author may be anonymous.
- A work of art may be considered an authentic example of a traditional culture or genre when it conforms to the style, materials, process of creation and other essential attributes of that genre.
- Many traditions are thought to be "owned" by an ethnic group, and work in that genre is only considered authentic if it is created by a member of that group. This may help to protect the originators of an art tradition from cultural appropriation.
- Cultural appropriation is the adoption of certain elements from another culture without the consent of people who belong to that culture.
- Cultural appropriation typically involves members of a dominant group exploiting the culture of less privileged groups. Quite often, this is done along racial and ethnic lines with little understanding of the latter's history, experiences and traditions.
- Culture is defined as the beliefs, ideas, traditions, speech, and material objects associated with a particular group of people. Appropriation is the illegal, unfair, or unjust taking of something that doesn't belong to you.
- The following links reference appropriation and protocols and recent reinterpretations of past practices:

<http://www.abc.net.au/news/2017-03-05/aboriginalia-and-the-politics-of-aboriginal-kitsch/8323130>

<https://www.artslaw.com.au/articles/entry/indigenous-protocols/>

The Inquiry will be interested to understand New Zealand's approach on the Maori souvenir market versus authentic Arts and crafts in NZ - described in the first of the following three links. The second one comments on the NZ approach to labelling. These NZ media and governmental articles seem to us to indicate that the approach AAAA is recommending reflects the apparently successful New Zealand policies and regulation

<https://www.comcom.govt.nz/dmsdocument/11579>

<http://idealog.co.nz/venture/2009/04/kiwi-or-kitsch>

<http://www.stuff.co.nz/national/5392606/Artists-fight-flood-of-fake-Maori-trinkets>

More on 'Authenticity'

There are other aspects of 'authenticity' that AAAA believes appropriate to share with the Inquiry in the hope that they will help the Inquiry better understand the complexities that need to be taken into account.

Many Aboriginal people engaged in the production of tourist product are of mixed indigenous heritage; and/or mixed indigenous heritage and non-indigenous heritage.

For example, all over Queensland, people are the descendants of those who were removed from 'traditional' communities by the welfare authority because they were considered 'trouble makers' and moved to missions like Woorabinda, Cherbourg, Doomadgee, Hopevale, Kowanyama, Lockhart River, Mapoon, Palm Island, Wujal Wujal and Yarrabah. The last of these did not cease being a 'mission' until 1987.

Here they intermarried. Many encountered trouble once more, or were moved on where they had children by others a number of times over. As a direct consequence, a

very large number of Indigenous people are of mixed indigenous blood and their descendants can claim the right to paint in many different 'authentic styles'.....hence artists that mix up dots and various clan patterns and crosshatching in their works.

These artists feel the direct brunt of suggestions by 'pure bred' Aboriginal people who complain that their imagery is being 'appropriated' or used inauthentically/inappropriately. They suffer the added disadvantage that their own cultural background has been compromised due to the breakdown of cultural and ceremonial practices in their mixed blood communities, with all the attendant problems of societal breakdown.

This is mirrored in other States.

Term of Reference 3 - Prevalence of inauthentic ATSI style art and craft products and merchandise in the market

A proper understanding of the prevalence of inauthentic ATSI style art and craft products and merchandise needs to begin by defining what market segment is being considered.

In broad terms, what happens in parts of the tourist souvenir segment does not happen in the fine art and craft segment.

In the tourist, giftware, manufactured souvenir segment, and if the distribution channel is via retailers in the recognised tourist centres of activity who are not members of AAAA, or signatories to the Indigenous Art Code, or not otherwise ethical traders, then AAAA accepts that inauthentic and unlicensed manufactured product is perceived to be present to a material degree.

We note that IAC's and Arts Law's recent check of an (undisclosed) number of retailers in major tourist centres indicated that (up to) 80% of the products on sale could be described as 'inauthentic'. AAAA takes that to mean that the souvenir products were not produced by aboriginal artists, or not produced under proper licensing arrangements with the appropriate Aboriginal interests, but were being offered for sale to tourist consumers on the false basis that the product was made by an Aboriginal, or properly licensed. We also assume that existing 'country of origin labels' are being removed or otherwise hidden from customer view.

There are two separate markets here: one involving people willing to pay premium prices for authentic art works, and one involving low cost souvenirs where authenticity is not a significant issue. It raises the question does the latter market really diminish the former?

Authentic Aboriginal Fine Art and Craft are constantly under threat from low cost imported souvenirs. ATSI style art and craft products and merchandise are tainted by 'copycat' importers. Rising demand for souvenirs stimulates the supply of cheap imports which impacts on the cultural integrity of authentic locally made or licensed Aboriginal arts and craft products and merchandise.

Part of the tourist experience is to purchase a tangible souvenir which will be a reminder of their holiday. Often multiple purchases will be made for friends and family back home. The low cost imported souvenirs are very appealing to the price sensitive tourist.

The proper labelling of authentic Aboriginal art or merchandise, whether made offshore or locally, can in AAAA's opinion, satisfy the demands of the souvenir market as well as maintain and improve a royalty based income for indigenous artists.

An overview

Previous reviews and reports, together with AAAA's own observations indicate:

- Manufactured products have been and remain a significant component of the final value of the Aboriginal Arts Industry.
- Manufactured product is produced by Aboriginal producers; joint ventures between Aboriginal and non-Aboriginal producers; and by non-Aboriginal producers.
- In each case, there is authentic and inauthentic, and licensed and unlicensed manufacture.
- Given the significant size of this sector of the industry, it is understandable that:
 - Aboriginal interests want a larger role in it, especially of the profit captured by unlicensed non-Aboriginal manufacturers, whether in Australia or overseas.
 - Profit making, based on imitations and unlicensed reproductions of Aboriginal cultural products is rightly and universally seen as offensive.
- There is concern in the art world about imitations of regional Aboriginal art styles, such as western desert pointillist decoration, western Arnhem Land mimi

art and eastern Arnhem land cross-hatching. Successful prosecutions of copyright infringers may have *increased* stylised and generic imitations, with such ‘borrowing’ used by both Aboriginal and non-Aboriginal imitators, generally in the manufacture of cheap tourist product. See Janke, T. 1999. *“Our culture: Our Future. Report on Australia’s Indigenous Cultural and Intellectual Property Rights.”*

- An important learning from the NIAAA scheme is to not ignore that Aboriginality is not synonymous with authenticity. Given the enormous variability in, and ownership of, regional art styles, it is quite possible for an Aboriginal artist to produce an item that is not ‘authentic’ (as documented in the 1989 *Review of the Aboriginal Arts and Craft Industry*, Department of Aboriginal Affairs).
- There is lack of correct information provided to the consumer in the tourist markets, not the fine art segment.
- There is deceptive information provided to consumers in tourist markets.
- However, AAAA do not want obstacles that disrupt opportunities for Indigenous people and discriminate against their rights to make an income from fair and commercially acceptable agreements.

The following example uses a recent event to demonstrate AAAA’s views about the marketing of a ‘boomerang’ by an international retailer. We offer this example to show the Inquiry how AAAA treated this instance, in the hope that doing so informs the Inquiry about how this worked in practice.

Example 2.

The Chanel boomerang touches on many cultural and sensitive boundaries. The boomerang is an artefact representing many traditional cultures, including Australia’s Indigenous cultures. Fortunately, the product bore no sacred iconography and Chanel has not tried to leverage Aboriginal mythology or dreamtime. We did not recommend to members that AAAA demand that Chanel apologise, or recall the product. We invited Chanel to engage in dialogue with relevant organisations, including commercially and culturally aware bodies such as AAAA, to better understand why this representation is culturally offensive and insensitive to Indigenous Australians.

Terms of Reference 2, 4, and 5 - Promoting authentic product, restricting inauthentic product, and licensing arrangements

Determining the correct option for promoting authentic product (or for restricting inauthentic product) should begin by being clear about ‘what products’ in ‘what markets’.

AAAA submits that the Inquiry should recommend that Government should focus its policy and regulatory attention, and its limited resources, on fixing problems with manufactured products in the tourist souvenir market.

In that product market, AAAA sees the main option as a mix of well-designed and well-resourced law and consumer and trade education (especially traders/retailers) aimed at prohibiting the unlicensed reproduction of Aboriginal imagery and the production and marketing of inadequately labelled ATSI style souvenirs.

Any such new law, however, will need to be carefully crafted in strict compliance with the Commonwealth Government’s own Best Practice Regulation Rules, particularly in respect of wide industry consultation, if it is to succeed in helping Aboriginal artists and ethical dealers working with those artists.

We know this because several AAAA members, both artists and galleries, have already been damaged by misconceived ideas in material published by the Indigenous Art Code Ltd. and others in support of the campaign against “fake art”. As indicated earlier in this submission, the souvenir market and merchandise is *not* art. This misleading language succeeded in attracting attention to an important issue, but damaged and is still damaging customer confidence in the Aboriginal art sector. We ask the Inquiry to recommend the removal or modification of such clumsy language.

To support that request, we offer the further explanations:

Art can be defined as the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power.

Posters and objects representing reproductions of famous art works, sold in museums, are not works of art in themselves, but may be reproduced with

permission from the artist, estate, or gallery. Any reproduction of an artist's IP does not represent an artwork per se, but may not be illegal.

Tourist souvenirs and merchandise which reproduces indigenous iconography should not be sold as works of art, (otherwise viewed as fraud), and should seek permission to reproduce iconography– otherwise viewed as appropriation.

The “Fake Art” campaign materials implied that product not made by an Aboriginal art-centre was ‘fake’, and recommended customers purchase only from an Aboriginal art-centre. This damaged aboriginal artists working independently of art centres as well as dealers and commercial galleries supporting those artists.

AAAA invites the Inquiry to recommend that all industry participants’ perspectives are properly considered. The design of an effective education, monitoring and compliance regime will be critical to the success of any form of authenticity labelling or certification. The necessary market knowledge and industry experience must be engaged properly in the decision-making, at the design stage. This can be done by talking to people, including the AAAA, with the appropriate marketing experience, people who understand aboriginal art practice, people who understand who buys Aboriginal art and craft, people who understand how Aboriginal art and craft comes to market, and people who understand Aboriginal art customers.

To the extent that the Inquiry wants to address Aboriginal Fine Art and Craft, it should recommend that the optimal way to drive authentic content and ethical practice is by continuing to use the power of properly informed, confident consumers. That remains the correct principle. But current practice needs significant reworking, especially by improving the effectiveness of the IAC and its bias towards community/art centre only based art production.

But relying on well-informed consumers won't be a complete answer in the tourist art, craft and merchandise market. The information going to tourists about what questions they should be asking and why they should buy from IAC signatories, or AAAA members should be improved. But, even with proper information delivered at the right time to tourists, more needs to be done in respect of existing retailers and their purchasing agents.

When it comes to improving the behaviour of at least some retailers in the tourist market, AAAA assumes that a mix of new law, better education, and stronger

enforcement, even of existing laws and regulation is required. Stronger enforcement is the key. We see this as mostly a resourcing issue for Government, not a 'new law' issue.

'Authentic art' education needs to focus further up the supply chain, not just the end user. The retail Purchasing Managers/buyers have the power to control what lands on the retail shelves for the consumer (end user) to purchase. By educating this segment of the industry we will see less inauthentic souvenirs in the marketplace.

How to execute this? One option is for the IAC to be more effective, to expand focus beyond artists, dealers and consumers and to increase its appeal to manufacturers, distributors and retailers of souvenirs – this will increase pressure on this segment of the industry to adopt Best Practice. However, the IAC Board does not currently have the representation from the sector it would be trying to influence. In any event, necessary steps won't be sufficient unless supported by proper enforcement. Proper enforcement will become more likely given that it will be focused on the narrow segment that has the material inauthenticity problems.

On the practicalities of import prohibition, our view is that it is not feasible to monitor imports. Customs do not have the resources or time to inspect every container. We say that is another reason why the aim should be to disable these importers by educating the retailers and potential consumers. We consider other problems with the notion of prohibition at page 15.

Other factors to take into account for promoting authentic content, and ethical conduct

These factors have been distilled by AAAA members over many years:

- Not all content is produced in remote areas; remember urban Aboriginal artists.
- Develop Aboriginal artists through funding of the grass-roots at the studio level, whether art-centre, private dealer, or independent artist with their own studio.
- Encourage and assist the sector to develop a fully functioning 'whole of arts industry organisation' to promote all Aboriginal art and artists, whether inside or outside the art-centre model.

- Stop funding grass-roots production for production's sake. This policy generates overproduction, often of questionable financial or cultural value, which feeds into consumer suspicion and indifference.
- Get serious about making proper use of the currently underutilised commercial knowledge and experience to build a financially sustainable sector. Instil basic doctrine and discipline.
- Government funding and subsidisation should not continue to be the main game for recipients. Funding should become focussed on growing consumption, not production
- Insist that funding recipients have identified, monitored, and enforced steps to financial sustainability
- Stop the 'them' and 'us' rhetoric, and focus on art and the artists. Certain art-centres, and the bodies funded by government to represent them, have taken 'competitive conduct' to mean bagging their (usually private sector) competitors. This is an illustration of the poor marketing analysis and conduct by too many art-centres. One effect is to drive down consumer confidence, and demand. It is not a productive way to better inform customers and potential customers, or to make better Aboriginal art.
- Individual, independent artists deserve to be properly rewarded for their work.
- Current industry structure is underperforming because of the ideologically driven motives and misguided actions of some. This partly explains why retailers in the tourist markets don't yet see the IAC Code of Conduct as applicable to them or the products they sell.
- We ask the Inquiry to endorse recent efforts by the Dept for the Arts to assist the sector to complete the Task the Senate Inquiry in 2007 correctly identified. The sector needs a 'safe place' to talk to each other, including on how to improve current regulation, and current attempts to educate consumers why buying from IAC signatories, or AAAA Code of Ethics signatories, or other ethical businesses, is the best way to grow a vibrant, healthy, sustainable and inclusive Aboriginal art industry. This discussion on intelligent regulation could include whether it is feasible to have a licensing system for ALL dealers of ALL Aboriginal art, craft, and merchandise, in ALL market sectors.
- The task of building a well-governed, well-funded body that properly understands and represents all sectors of the Indigenous visual art and craft industry is still a work in progress. This body would then be able to discharge the responsibilities identified by the 2007 Senate inquiry. The Senate identified the right solution, even for dealing with inauthentic ATSI style art, craft products and merchandise.

But creating that whole of industry body as the best way of managing the problems, remains to be completed.

- Government funding should focus on consumption, not production. On 'demand', not 'supply'.

Protecting Aboriginal artists by protecting the viability of tourist retailers

Another factor to consider is the matter of the viability of tourist retailers.

For the following reasons, the likely result of any law that *outlaws* inauthentic tourist product will be an appreciable decline in the viability of retail gift and souvenir shops, thereby hurting the very artists we are all trying to protect. It is a complicated scenario.

You can't get an Aboriginal person to make and paint a didgeridoo for under a minimum of \$200. This needs to sell for close to \$600 including GST through a high visibility tourist location.

A didgeridoo made by a non-indigenous workshop and painted by an Aboriginal artist wholesales for a minimum of \$150 to the retailer and retails for around \$400-450.

No Aboriginal people make a didgeridoo that can be retailed for a price of between \$40 and \$160, but these sell every day of the week in many locations. This is a big factor in enabling them to remain profitable and stay open.

This holds for licensed and manufactured products. They fill price points that genuine Aboriginal products don't and never will. Not every tourist is willing to pay a premium just because it is made by an Aboriginal person.

That's why (properly enforced) accurate labels that specify 'Aboriginal made', 'Aboriginal designed', and 'not made or designed by an Aboriginal person' make more sense than banning inauthentic tourist product altogether.

Every tourist shop forced to close its door is another outlet lost to Aboriginal artists looking to sell their genuine product.

Concluding Remarks

Any scheme seeking to identify authentic product and hoping to remove culturally inappropriate product from any part of the art and craft market must, if it is to succeed, be designed, supported and promoted by a broad industry alliance.

To be effective, it must become synonymous with branding that customers can trust and seek out because it guarantees that Aboriginal artists will benefit.

It must be practical, enforceable, and designed in such a way that the consumer is not turned away from Aboriginal art or craft because it is perceived as too problematic.

The Department for the Arts' advice to the 2007 Senate Inquiry is an apt summary:

The label [in 1999] was not successful for a number of reasons, including being expensive and administratively complex and not distinguishing between fine art and manufactured tourist art. As such it did not have broad support across the sector. If a national Indigenous art label was to be introduced in Australia, significant research and consultation would be necessary to ensure that it was developed appropriately and was supported by Indigenous artists and art centres."

Apart from not *expressly* recognizing the critical importance of private dealers and galleries in garnering 'broad sector support', the Department's recommended way forward was correct then, and still is.

We ask the Inquiry to recommend that the Department continue its welcome and useful recent efforts to bring the privately financed and publically financed parts of the Aboriginal Arts sector closer together to improve the reach and effectiveness of what is currently the best option for addressing ethical conduct across the sector – the Indigenous Art Code.

Response to Issues Paper
Museums Galleries Australia
INDIGENOUS ROADMAP PROJECT

Museums Galleries Australia (MGA) wants to improve engagement with Indigenous people, so is developing a 10-year Roadmap, focusing on two areas – how Indigenous cultures and histories are represented in museums/galleries, and the employment and training of Indigenous people in museums and galleries.

To facilitate discussion, the MGA Issues Paper asks – what should be covered in the Roadmap; and how should associated issues be addressed?

The Aboriginal Art Association of Australia (AAAA) appreciates being invited to share our experience and ideas.

AAAA serves and represents people who produce, promote or support Indigenous Art, and the cultures that nurture it. We are a not-for-profit, member-based, self-funded organisation with an honorary Board elected periodically by ballot of members. Constituted as a national and international industry-wide body, our membership covers Indigenous Artists (independent and Art Centre affiliated), Commercial Galleries, Dealers, Art Centres and Licensors.

The full suite of AAAA objectives is in our Constitution, at S. 3.

(<http://aboriginalart.org.au/aaaa/wp-content/uploads/2016/10/Constitution-of-Aboriginal-Art-Association-of-Australia-Ltd.>)

Our Key Concern

AAAA has a particular interest in gallery practice, because Indigenous visual art is the principal vehicle for representing and sustaining Indigenous cultures and histories.

Shortly stated, from our perspective, not all Indigenous artists are being appropriately or equally represented in public galleries. AAAA members raise this concern with us every year. Many Indigenous Artist Members confirm that general concern by reporting that many Indigenous artists suffer what is effective discrimination when it comes to being represented in public galleries and major art awards. AAAA tries, but struggles to get sufficient traction with our attempts to address and overcome the many underlying cultural and competitive complexities

associated with Indigenous art created by indigenous artists who happen to be not affiliated with an Indigenous art-centre.

We hope that this issue can be overcome via the Roadmap.

If that proves to be not possible in the Project timeframe, AAAA hopes that this submission will generate ongoing discussions with MGA which can design a way to overcome what AAAA members regard as an under-representation of Indigenous culture and history in institutions whose very purpose is to provide exactly that representation.

We aren't qualified to address every issue. Where we comment, we follow the Issues Paper framework.

1. Self-Determination (Issues Paper – 3.1)

AAAA agrees with the Issues Paper - "Indigenous peoples' right to self-determination" is "essential for Indigenous Cultural and Intellectual Property". As a demonstration of our belief in this principle, AAAA has established an Indigenous Cultural Council - a body which can impose binding directions on AAAA.

Indigenous *peoples* have that right. So do individual Indigenous people.

Indigenous peoples have the right to artistic and cultural self-determination. So do individual Indigenous artists.

Rights of artistic and cultural self-determination of an Indigenous artist can't be determined (at least, not ethically) based on whether that artist is art-centre affiliated. And yet, that is common practice, including in public galleries.

The Art Gallery NSW's *Aboriginal and Torres Strait Islander engagement policy*, at Part 2, helps to explain our point:

12. Aboriginal and Torres Strait Islander peoples have the right to self-determination in their cultural affairs and expression of cultural material (Australia Council's Protocols for Producing Indigenous Australian Visual Arts). Historically, this right has not always been upheld in Australia. The Gallery will ensure a sense of ownership occurs through appropriate consultation with relevant Aboriginal and Torres Strait Islander *artists, communities, agencies and organisations*. (Our emphasis)

This Policy correctly identifies that self-determination is ensured through appropriate consultation with Indigenous artists, and communities, and agencies, and organisations. The Policy correctly recognises the possible distinction between "artists" and their "communities". The Policy correctly recognises the potential for separate, additional roles of "agencies" and "organisations"

When it comes to independent Indigenous artists, the Protocol and the Policy exist. But implementation of the Policy does not always happen. For independent Indigenous artists, self-determination at gallery level can be a mirage.

AAAA experience is that, when it comes to the representation of independent Indigenous artists in collections, or acceptance in Art Prizes, there is no proper engagement with AAAA's indigenous artist members, or with AAAA members who represent independent indigenous artists, or with agencies such as dealers or commercial galleries, or with AAAA as the representative organisation.

If unaffiliated Indigenous artists are denied Gallery representation because of a lack of art-centre affiliation, how can it be said they are able to exercise their right to self-determination in their cultural affairs and expression?

The same Art Gallery of NSW policy, at clause 14 of Part 2 says;

“The Gallery aspires to bring the best Indigenous art to the people of NSW”

The Gallery can't be doing so if it is rejecting indigenous art, not on its merits, but because the artist happens to be not-affiliated with a preferred production model.

2. Indigenous Engagement and Community Consultation (Issues Paper 3.2)

The Issues Paper notes that “communication with the relevant Indigenous communities and people is essential” if galleries are to get correct information.

We agree, but, as we indicated in 1 above, proper communication with independent Indigenous artists is not even getting started.

We can't be sure that we know exactly how this has evolved. We assume that gallery people think they are doing the right thing to give preference to Indigenous artists who are art-centre affiliated, in the name of protecting the art-centre model, and government investment in it. Such motivation is well-intentioned, but it misunderstands and misapplies fundamental marketing and commercial principle. This approach eventually damages the whole ecosystem, including art centres. We explain how we reckon that damage happens in later comments.

One of AAAA's enduring challenges has been, and remains: - persuading decision-makers that including *all* Indigenous artists is the best way to win the degree of consumer confidence and trust on which a prosperous and growing art market depends.

AAAA would be pleased to explore more ideas with MGA about how AAAA's experience in designing effective consultation with Indigenous artists, and their communities, can help MGA's members. We hope this can be part of an ongoing dialogue.

3. Application of Protocols (3.8 Issues Paper)

The Paper asks - what protocols should be applied to museums and galleries?

AAAA presumes that the extensive work done on such protocols means that existing protocols are generally adequate, that they are being fully, faithfully, and transparently applied, and that there are ways to independently audit such systems to guarantee proper implementation.

AAAA would like to explore with MGA whether the issue about acceptance of work from independent Indigenous artists can be made the subject of a new, or strengthened, protocol.

In the first instance, AAAA sets out below the protocols which we take to be the working definitions used in the Indigenous fine art and craft sector:

- Authenticity of provenance means that the origin or authorship of a work of art has been correctly identified.
- Cultural authenticity, or authenticity of style or tradition, is concerned with whether a work is a genuine expression of an artistic tradition, even when the author may be anonymous.
- A work of art may be considered an authentic example of a traditional culture or genre when it conforms to the style, materials, process of creation and other essential attributes of that genre.
- Many traditions are thought to be "owned" by an ethnic group, and work in that genre is only considered authentic if it is created by a member of that group. This may help to protect the originators of an art tradition from cultural appropriation.
- Cultural appropriation is the adoption of certain elements from another culture without the consent of people who belong to that culture.
- Cultural appropriation typically involves members of a dominant group exploiting the culture of less privileged groups. Quite often, this is done along racial and ethnic lines with little understanding of the latter's history, experiences and traditions.
- Culture is defined as the beliefs, ideas, traditions, speech, and material objects associated with a particular group of people. Appropriation is the illegal, unfair, or unjust taking of something that doesn't belong to you.

The Issues Paper seeks views on the scope and enforceability of protocols.

On scope: – AAAA's tentative suggestion is that they should be national, rather than State level. Based on widespread member concerns about public sector galleries, we suggest that national protocols, properly monitored, would be a sensible option, provided that national protocols did not lead to inflexible application. Application needs to remain sufficiently flexible to encompass 'local' circumstances.

On enforcement: – AAAA’s view is that protocols should be ‘enforceable’. Our first preference would be to explore whether high levels of clarity and certainty in the protocols might be enforced through high levels of transparency, and accessibility by interested parties. Giving protocols legal force should be a ‘threat’ made to maximize good-quality design and compliance, but without having a new raft of externally imposed black letter regulation to contend with, regulation that won’t be followed unless heavily and expensively enforced by government. For the ‘rules’ to work, they will have to be well –designed, by the people who will have to live with those rules, under the threat that others may step in and regulate if the sector doesn’t sort it out fairly.

There are other aspects of ‘authenticity’ that AAAA believes appropriate to share in the hope that they will help the Project better understand the complexities that need to be taken into account in relation to the design and application of protocols, especially compulsory ones.

Many Aboriginal people engaged in the production of tourist product are of mixed indigenous heritage; and/or mixed indigenous heritage and non-indigenous heritage.

For example, all over Queensland, people are the descendants of those who were removed from ‘traditional’ communities by the welfare authority because they were considered ‘trouble makers’ and moved to missions like Woorabinda, Cherbourg, Doomadgee, Hopevale, Kowanyama, Lockhart River, Mapoon, Palm Island, Wujal Wujal and Yarrabah. The last of these did not cease being a ‘mission’ until 1987.

Here they intermarried. Many encountered trouble once more, or were moved on where they had children by others a number of times over. As a direct consequence, a very large number of Indigenous people are of mixed indigenous blood and their descendants can claim the right to paint in many different ‘authentic styles’ - hence artists that mix up dots and various clan patterns and crosshatching in their works.

These artists feel the direct brunt of suggestions by ‘pure bred’ Aboriginal people who complain that their imagery is being ‘appropriated’ or used inauthentically/inappropriately. They suffer the added disadvantage that their own cultural background has been compromised due to the breakdown of cultural and ceremonial practices in their mixed blood communities, with all the attendant problems of societal breakdown.

This is mirrored in other States.

4. Attribution (Issues Paper 3.10)

We use the Art Gallery NSW Policy on *Provenance and Due Diligence*, at 6.1 (c) to help us highlight what we see as key elements:

6.1 Principles

c. the Gallery is satisfied that:

e. with regard to Aboriginal or Torres Strait Islander art, the origin and source of the artwork and the identity of any community or individual that may wish to assert a legal and/or customary interest in the artwork has been identified and representatives of relevant Indigenous communities have been consulted in accordance with the Aboriginal and Torres Strait Islander Engagement Policy and Procedures.

This NSW Policy again recognises the correct principle – there *will* be circumstances where the identity of an individual artist is relevant. This principle surely should not be displaced by a practice of not dealing with an independent Indigenous artist, simply because of that independence.

There *are* circumstances where it will be necessary to identify relevant individuals as well as relevant communities.

The NSW Policy recognizes this. So must the practice.

5. Benefit Sharing (Issues Paper 3.11)

AAAA agrees with the Issues Paper – “When using Indigenous cultural material commercially, benefit sharing, royalties or compensation could be a way of helping the appropriate communities.”

AAAA says that proposition applies equally to an independent Indigenous artist. Put the other way around, it would be unfair to deny such benefit sharing to an Indigenous artist simply because the artist was not affiliated to a particular art-centre.

AAAA’s experience is that ‘benefit sharing’ with an individual artist also benefits the artist’s community. It is not an ‘either/or’ choice. We would be pleased to talk with MGA about our experience in connection with this bedrock issue.

6. Maintaining Indigenous Culture (3.12)

The Issues Paper asks – how can museums/galleries work towards maintaining Indigenous culture?

Part of an answer to that vitally important question is for galleries to include independent Indigenous artists in their collections, and in their Art Competitions. Inclusion should be based on merit. Inclusion should not be denied based on the production model.

7. Recognition and Protection (3.13)

The Issues Paper notes that proper recognition and protection of Indigenous heritage requires that reproduction and dissemination is handled correctly.

AAAA's submission to the House of Representative's Inquiry on "The growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia" covers this ground. We invite the Project to review that submission.

AAAA's view is that dissemination is not being handled correctly. It is appropriate to drill further into these complex and challenging issues:

Improving reproduction and dissemination by growing the Sector:

- Federal and State governments fund art production and are not sufficiently focused on growing consumption.
- What happened to the Aboriginal art Triennials? This raises the profile of Aboriginal art nationally and internationally.
- Where is the National Aboriginal Art Gallery? Government should increase support and funding, based on a more detailed understanding of the social and economic payoffs.
- Restrictive acceptance by galleries endorses and exacerbates the restrictive distribution policies of government funded art centres which are hurting many artists in the communities they service and constricting sector growth:
 - o Art centres that rely on government subsidies refuse to market their art except through a very narrow channel of galleries
 - o These art centres can't make ends meet, yet because there is no road to sustainability that they must follow, they are under no pressure to expand distribution and expand revenue.
 - o This constricts the growth of the industry and unnecessarily soaks up funding that could otherwise be used on marketing and on supporting all artists
 - o The current distribution exclusivity practices appear to be based on the Western European model, which is ridiculous. In that model, you typically have a series of single artists who are exclusive with a gallery in a State. The Indigenous model sees an entire art centre (some over 100 artists) being exclusively tied to a gallery.
 - o The upshot of this is that you have all the art centres distributing through one or two galleries in each state, resulting in a maximum of one show per year per state. Typically, those shows will feature only a small number of artists

- o Accordingly, you have talented artists that never get a chance to develop or to earn a reasonable income because they are subordinated behind existing stars
- o All this is happening whilst galleries outside the clique are crying out for art, but will not be supplied
- o The above is made worse because of the aggressive, sometimes bullying, tactics used by art centres to stop their artists painting elsewhere
- o Some financial rationalism (namely, financial sustainability targets which operate to force the art centres to drop the restrictions or lose funding because they have not met their financial sustainability targets), would force a change to distribution policy, give a chance to a whole bunch of artists that never get a fair crack at it and benefit the industry in general by freeing up the market and getting more exposure for the art in general

End the 'Art Centre only' Focus

- Independent artists are effectively denied access at all major indigenous art awards, driven by organisations that rely on government funding for their existence.

At a recent major Indigenous arts industry event, the current AAAA President asked why independent artists were not included. The written response disclosed that, if they accepted an independent artist, then the art centres would withdraw from the event. This occurs with government funded events which essentially means the Australian Government is excluding artists who become independent. This is outrageous considering the two world record sales of Aboriginal Artwork were both derived through independent artists and private dealer pathways.

- The distribution of government funding is biased towards government-funded organisations that now find themselves in the 'sweet spot' whereby:
 - o Their funding gives them budgets for more people whose role it is to get yet more funding.
 - o Their funding gives them the opportunity, without any responsibility to demonstrate financial sustainability, to ever grow their businesses, get ever stronger and beat down competition from the private sector and the independent artist

- o Their funding results in the opening of ever more, mostly unviable, art centres, tipping the scales as regards industry weight and “say” relentlessly towards the public sector and giving that sector ever more voice versus independent artists and galleries that must firstly work to sustain themselves.
 - o In short, current funding practices discriminate ever more against the independent Indigenous artist and entrepreneur
- Independent Aboriginal artists’ shows are basically never shown at publicly funded institutions such as the MCA and the AGNSW. Non-art centre works, as a matter of policy are basically never acquired/only a tiny percentage are acquired by these organisations. The organisations in question rely on government funds yet seem to feel pressured to not exhibit any artist that does not work for an art centre.

8. Employment (3.14) and (3.15)

The Issues Paper asks – how should museums and galleries approach Indigenous employment, and what training should be provided to Indigenous people?

AAAA’s view is that training should address what matters most in the wider Indigenous Art ecosystem, aimed particularly at creating a growing, prospering, sustainable Indigenous Art Sector, based on a well-informed Australian population, confident about and proud to share its Aboriginal heritage and cultures.

That training would cover:

The basics of financial sustainability,

Basic business doctrine and discipline,

An understanding of why government funding should protect sustainability by focusing on consumption, not production,

An understanding of marketing principles and practice,

An understanding of how to use information and communications technologies,.

What it means to be a customer-centred service, and how to do it.

The Paper asks whether museums and galleries should support communities in the management of art-centres.

Yes, but don’t exclude independent Indigenous artists from such support and training.

And don't forget urban Indigenous artists.

9. Governance (3.16)

The Paper ask whether Indigenous people should be on boards.

It is important for Indigenous people to be involved in decision-making, especially when such decisions impact on Indigenous people, as is clearly the case with decisions about the Indigenous art sector.

But what is clear in principle is difficult to achieve in practice.

AAAA has had Indigenous artists on its Board for over 4 years.

It can be done, but it has to be a patient investment in human capital building.

The Paper notes that Indigenous board members can help with consultations.

AAAA's experience confirms that is very much the case, but even in that respect, it takes time for the organisation to understand the vastly different cultural norms that come into play, even with what appear to some eyes to be relatively straightforward consultation and networking.

The Paper also asks what level of training is required, given that MCA expects board members to help at the policy-making level.

AAAA sees that as a valid, and achievable objective.

As to training content, we offer the following ideas:

Meaningful help at the strategic level implies a reasonable understanding of:

1. Why the sustainability of the Indigenous Art sector depends on the sustainability of the culture that informs the genius that creates the art;
2. Why ethical art content, and ethical trade conduct matters, and what each looks like;
3. Why the Indigenous art sector has to be inclusive, and non-partisan – affording a fair go for all;
4. Why partisan behaviour and divisiveness risk undermining the whole Indigenous visual arts sector;
5. Why campaigns designed to weaken competition actually weakens consumer confidence and trust, and thus damages the whole Indigenous art sector;

6. Why, in properly-informed and properly-functioning competitive art markets, participating firms do not earn high returns by fraudulent conduct, or by trying to damage competitors. Rather, they prosper by identifying, developing and supplying product which consumers value more than it cost to produce;
7. The fundamental social and economic reasons why there must be no partisan preference against independent Indigenous artists, simply because they are part of a profit-seeking model.

CONCLUDING COMMENTS

If MGA wants to advance and improve the representation of Indigenous people in museums and galleries, it could include in its strategies a way to overcome the understandable but counterproductive inclination in galleries against including independent Indigenous artists in their collections or art awards.

Excluding independent Indigenous artists is flat-out inconsistent with a 10-year roadmap for better Indigenous engagement.

AAAA appreciates MGA's invitation to express our views on these complex and contested matters. We had two weeks to compile this submission, so we feel like we have only scratched the surface.

We hope we have done enough, though, to persuade MGA that AAAA and MGA seek the same public outcomes, and that ongoing ideas sharing and communication between us will improve the chances of Australia securing those outcomes more quickly.

DATED: 18TH December, 2017

28 February 2019

submissions@niaca.com.au

Dear Interim NIACA Secretariat

Re: NIACA Discussion Paper Submission

The following submission is lodged on behalf of the Aboriginal Art Association of Australia's (AAAA) Aboriginal Cultural Council (ACC) following the ACC's consultation with the AAAA's artist and other Indigenous members.

The AAAA is a national body which serves and represents artists, individuals and organisations that produce, promote, protect or support Indigenous art and the cultures that create and nurture that art. The AAAA operates as an advocate for all industry participants, whether artist, gallery or dealer and whether independent or art centre affiliated.

The Association has over 300 members of which approximately 50% are Indigenous artists. The artist and other Indigenous members come from diverse geographical backgrounds, ensuring the Association can draw on different perspectives and cultural nuances from across Australia. The artists' have dedicated and meaningful representation on the Association Board and their interests are also protected and promoted by an Indigenous Patron and the ACC. The ACC's existence and powers are enshrined in the AAAA's Constitution, which can only be changed with the agreement of both artist and dealer/gallerist members. As such, artists' say in the running of the AAAA and, by extension, the industry, insofar as the AAAA can influence future developments, is and will be enduring.

The general feedback of the ACC is one of guarded support for the NIACA initiative. Guarded because on one hand the ACC can see the potential but on the other, Indigenous members have seen many failed initiatives. These failed initiatives have often been characterised by a lack of proper consultation and proper engagement with the industry as a whole (both across methods that art comes to market and geographically). A quote from one Indigenous member follows:

(The) whole document is leading (Indigenous people) already without any form of consultation thus far; prior to compiling baseline measuring and research questions. Who compiled this and is it questions lead by First Nations; Chicken or the Egg. I dare say that someone with good intentions through government has decided to lead this conversation and lead the direction of the conversation without developing any real insights from community. Although the questions themselves request and recognise the need for community consultation, the questions have already been developed. So, I surmise that again the community has not been approached about any pressing need from their day to day activities. This becomes conclusive as it is noted and assumed that the Authority will be formed even to the point of asking best legal structure for this.

Aboriginal Art Association of Australia Limited
ABN 40 960 942 792

The Secretary: PO Box 378 Croydon Park NSW 2133
e: mail@aboriginalart.org.au w: www.aboriginalart.org.au

Regarding the preceding quote: the ACC and the AAAA Board note that at no time was the AAAA in any way consulted prior to the announcement of the initiative, despite direct requests to the Australia Council for a briefing. The ACC points out that this is a poor start to what is being presented as a consultative process. Furthermore, the ACC wants to see all sectors of the industry properly represented going forward, not just the existing, government funded advocacy bodies.

Addressing the specific questions upon which feedback has been requested.

Question 1: Do you think a NIACA should exist? Why or why not?

In short, a qualified yes.

The concept has merit and has the general support of the AAAA's Indigenous members. Consistent across the feedback received, however, is the need to explore in detail just what the scope, depth and breadth of NIACA's activities would be. The dangers of overreach and of being overly ambitious in its objectives, resulting in nothing getting done, were continually mentioned.

Consistent amongst the feedback was the necessity to explore through further discussion amongst peak bodies just what Indigenous people want and what can realistically be achieved. As such, there is clear support from the ACC for the proposed 2019 Forum. The ACC through the AAAA wishes to take part in this forum.

Question 2: What do you think the most important needs and priorities a NIACA should address - for the short, medium and long term?

Short term

- Intellectual property – develop, promote and bring into law a national solution to the one common problem faced by every individual and interest group across the arts
- A co-ordinated advocacy approach, as opposed to the current approach where interest groups are competing and acting against one another without a clear appreciation of the impacts of their actions on the overall arts industry. In the words of one member:

"I would also like to see real effort being put into more co-operation between community art centres, art dealers and others involved in the industry. There is too much bickering and in-fighting going on, this does not help artists or their communities."

- Co-ordinating body – many of the issues raised in the NIACA outline and in the responses received by the ACC relate to matters that are already dealt with by existing, government funded bodies. The NIACA could act as a central resource to direct artists to existing solutions. The ACC notes that, in their opinion, the problem is often not the absence of the solution for the artist, it is either (or often both) the absence of the knowledge that help with a problem exists or the appointed body not doing the job they are funded for.

Medium and Long Term

Much of the feedback here revolved around how making progress was, at almost every turn, hamstrung by issues around communication, such as:

- the capacity for artists to communicate their needs in language those trying to assist firstly really listen to then try to truly understand;
- those tasked with helping artist having the necessary awareness and experience to
 - communicate in a way that artists understand
 - address issues that artists see as important, rather than what those helping see as important

The above stretches across legal issues, financial issues, cultural nuances and more.

In the words of one member:

“Most of the artists in the communities, and their families, and their whole communities, for that matter, rely on their art as the only source of income outside of welfare. Because of culture and language differences, they have no direct say in how anything in the industry works. There are plenty of people advocating and working for them and many of them do a good job, others not so good. I would like to see them be given a much better idea of how the whole industry works - and that would mean getting right down to basics - and I would like to see their voices being heard at the highest level. Too much policy and regulation is determined without their input at all. If a body like this is going to work then it has to know how to communicate with people who don’t speak English and who don’t know how any of this works.”

The ACC contends that there is no short-term fix to the above. It can only be addressed by a long term commitment to education, both of artists and those serving artists. One without the other will not provide the solution.

Question 3: What activities are the most relevant to you, your community, your region or your organisation?

See above.

Question 4: What cultural material should be covered by the NIACA model? Arts? Cultural expression including languages? Potential to cover traditional knowledge more broadly including biodiversity knowledge?

Feedback included:

“I think it (NIACA) should stick to what it knows about. There is not enough knowledge and expertise in the art industry in relation to matters like language and biodiversity to be of much use. Other people with the relevant expertise - language speakers and linguists, holders of traditional knowledge, botanists, zoologists etc should look after these issues.”

From another artist:

“Look, we can’t even get the basics right but now we are going to go off and combine all this into one national body, then throw in dance, biodiversity and whatever else? How are we going to do that and actually make progress? It is too ambitious. We need to get some basics right, always knowing where we want to build towards, and go from there.”

The ACC acknowledges that there are different streams of cultural expression that needs to be considered and that AAAA members have generally responded from the point of view of the arts. The possibility the ACC could see is that an NIACA could have various discrete departments, represented by specialist Boards, that engaged in their own areas but which were co-ordinated through an overarching Board which acted to ensure that the overall programme for the body was complimentary and working towards common goals.

Question 5: What groups should a NIACA represent – through its membership, steering committee, decision-making structure and board? What art and cultural forms should be represented?

The last paragraph in the answer to question 4 somewhat addresses this.

The ACC reconfirms that the Indigenous members of the AAAA ask for representation at on the steering committee. The ACC notes that government funded initiatives in Indigenous art have repeated marginalised or totally ignored those working outside the art centre movement, whether bush artists, artists from regional centres or artists from the cities. For NIACA to function properly and be an answer to all Indigenous people, there must be broad and balanced representation.

Consideration of appropriate decision-making structures, boards and what art and cultural forms should be represented logically is only relevant once the forums are complete, a steering committee has been appointed, the 2019 forum has taken place and it can be established that there is government support to fund an NIACA body, whatever form it may take. Therefore, at this point, the ACC regards further discussion on the matter as not being relevant.

Question 6: How should the NIACA model include local and regional decision-making structures?

Member feedback included:

"I know people who claim to be senior law men and women who aren't. There are plenty of people making comments on our law who know nothing about it. Each community-language group should be able to nominate their own people to speak for them, they need to be given that authority. These people need to have the confidence to speak up and not always rely on whitefellas and urban people to speak for them. Trained interpreters can help with that. In the NT there should be at least one representative from Central Australia/Desert, Big Rivers/Vic River - Roper River, Top End and Darwin. Darwin should be represented separately from the Top End because it has around half of the whole NT population and it is very diverse. Organisations like AAAA should be represented on the board by their Aboriginal members."

As well as the above feedback, matters to consider in answering this are:

- decisions on questions 1 to 4 are really necessary to define structures
- the definition of appropriate structures to ensure that feedback makes it up and into the decision-making bodies needs to take into account the way Indigenous people view the world. That view is not based on arbitrary boundaries, such as state borders, but on law and the way people in different geographic areas approach law

Question 7: What are the required skills, attributes and experiences of the NIACA steering committee and board?

Again, this will finally be guided by the answers to the preceding questions. However, useful guidance was offered to the ACC from a member:

“The whole group needs the following - the experience of being an artist or long term worker in the industry at a high level, knowledge of how governments and the public service work, knowledge of the law relating to the industry, a deep understanding of Aboriginal cultures, worldview and history, a first hand knowledge of an indigenous language or languages, the ability to communicate effectively cross culturally. We can’t expect all of this from individuals but we should expect it from the group as a whole.”

Question 8: How should board members be selected and how long should they serve?

Really, this needs to be discussed once it is clearer what the organisation will be trying to achieve.

Speaking about the art sector only, what is apparent is that the Board must be representative of the industry.

- It cannot be dominated by any one group or one group and those reliant on that group for their income and wellbeing.
- It must span urban through regional to bush artists
- It must have representatives of the different business models
- If it ensues that there are Board positions for various different interest or law based groups, the members of those groups must be the only ones that can nominate and vote for their representative
- Term – four years has been suggested, but requires discussion

Questions 9 and 10

Moot until much more work on the definition of what the organisation’s goals should be.

The ACC received some other feedback from Indigenous members that it wishes to mention at this early stage:

- There needs to be some sort of 'Code of Ethics' as signed up for and adhered to by Govt, Corp and Industry supporting the signatories of best practice; such as a Charter of Blak Arts
- Where are the skills transfer for community and artists?
- Who has ownership over any future research ' harnessing research' etc? Even this research, where is ownership as the very message’s communication might be conflicted with government funding thus ownership by government of research framework

- Current Art centres and their models: why wouldn't government fix that problem first before approaching IP and Cultural values. There is more to be gained out of developing a sustainable business/arts model independently funded and self-sustaining
- Some thoughts on IP issues:
 - need to be underpinned by legislation at Federal and State levels; policy means action
 - What do breaches or non-compliance look like; non-subscription; lack of policy with tangible outcomes and infringements; who polices complaints
 - Cannot be based on the 'United Nations - Charter of Right of Indigenous Peoples' as this is only a guideline and any inherent rights are not recognised within Australian law
 - Are there other successful models where Indigenous cultural rights have been successfully legislated that we can learn from rather than thinking we have to reinvent the wheel? New Zealand? North America?

If you have any questions, require clarification or wish to discuss any of the above, please email info@aboriginalart.org.au

Yours sincerely

Bess Nungarrayi Price, Charmaine Pwerle and Michael Mundagutta-Kullilliwari Connolly

For and on behalf of the Aboriginal Cultural Council of the Aboriginal Art Association of Australia

28 August 2019

Mr
Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear

Re: Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019

Thank you for your email of 15 July 2019 inviting the Aboriginal Art Association of Australia (AAAA) to lodge a submission on the above Bill. The Association also appreciates your granting an extension for lodgement until today.

As advised in my email of 12 August, the AAAA relies upon its Indigenous Members, Artist and Dealer, for direction on matters of Indigenous culture. Specifically, matters such as this Bill are referred to our Aboriginal Cultural Council (ACC), an independent group within the Association comprised solely of Indigenous people, for feedback and formal response.

About the AAAA

The Aboriginal Art Association of Australia serves and represents artists, individuals and organisations that produce, promote, protect or support Indigenous art and the cultures that create and nurture that art. We operate as an advocate for all industry participants, whether artist, gallery or dealer, independent or art centre affiliated.

Membership is comprised of 46 Trade Members, 7 Associate Members, over 160 Indigenous Artist Members and approximately 200 Supporter Members.

General Feedback on the Bill

- Both the ACC and the full Board of the AAAA are wholly supportive of the efforts to enshrine in legislation a solution to the matter of inauthentic art and souvenirs.
- We are of the opinion that a legislative solution is not only needed but can easily be enacted and is practically enforceable if it focuses on the core issue of inauthentic and unlicensed forms of expression of Indigenous culture.
- Our view is that the Bill should not be distracted by broader Indigenous cultural questions more appropriately dealt with under other legislation.

- Both the ACC and the Board contends that appropriate and effective legislation will ensure that the Indigenous creators and the consumers of artefacts, art and souvenirs are both given the right to make *informed choices*. The first group, the artists, by bringing their talent and a window into their culture to market in the manner they see fit. The second group, the consumer, by being provided with documentation that allows them to make informed choices on their purchases.

Detailed Comments and Recommendations

Ceremonial and Sacred Objects

The ACC commented in its first review of the Bill that the matter of sacred and ceremonial artefacts is a completely different issue to that of inauthentic art.

Their opinion is that issues concerning the handling of Indigenous peoples' sacred objects has no place in consumer law and therefore no place in the draft Bill. Their advice is that:

- Concerns about the matter must be dealt with under cultural heritage legislation;
- The above concerns should be considered together with broader discussions regarding inconsistent state and federal approaches in the patchwork legislative environment that blights the cultural heritage space; and
- Discussions on the matter must involve broad community consultation as the issues are incredibly complex and multi-layered

In addition to the concerns about inappropriate law being used to regulate sensitive matters of Indigenous culture, the ACC and the Board question what is to happen to existing collections of these objects if the Bill in its current form is passed. The ACC recognises and is appreciative of the fact that without the work of private collectors, many or most of these sacred items would have been lost for all time. The Committee should be aware that some of private collections of these objects have been carefully curated over decades and have immense value, both culturally and in monetary terms. At the stroke of a pen, the collections would be valueless (in monetary terms) and may be put at risk because there is no incentive for the collector to maintain them.

Recommendations:

- Excise ceremonial and sacred objects from the draft Bill and refer to a group set up to consider changes to cultural heritage legislation
- If these objects are not excised from the Bill, then the collectors of these objects who under the Bill would no longer be able to trade in them must be fully compensated

Indigenous Cultural Artefacts

The legislation categorises objects such as bark paintings, yidaki and boomerangs as cultural artefacts and seeks to apply different rules to trading in them than for other items such as paintings on canvas or linen. Specifically, under the Bill, the goods must be made on shore by an Indigenous artist or Community with whom the artefact is connected.

The ACC considered this matter carefully and discussed it in depth. It was clearly the part of the draft Bill that challenged the group the most to arrive at a balanced, considered, sensitive and sensible conclusion.

Matters worth mentioning include:

- As regards association of particular forms of cultural expression with particular communities:
 - This is something that Indigenous people cannot agree amongst themselves
 - Previous attempts to do this, such as at the time of the Olympics, failed. The imbroglio that transpired is best illustrated by the suggestion at the time to restrict the use of dots to the people of the western desert
 - The matter is complex and critical issues of culture and law are involved. It includes the highly sensitive issues of copy of designs by other Australian Indigenous people, something that traditionally would have resulted in the death of the transgressor
 - Attempts to regulate this cultural issue via consumer law is, in the opinion of the ACC, misguided and utterly inappropriate

- As regards having different rules for what the draft Bill terms as cultural artefacts:
 - The ACC appreciates that there is heightened sensitivity around certain forms of cultural expression
 - However, the ACC does not agree that a distinction should be drawn between cultural artefacts and other forms of cultural expression
 - The arbitrary nature of the current categorisation is demonstrated by bark paintings being in one group and paintings on canvas in another. The ACC sees no difference in the cultural importance of a dreaming on canvas versus one on bark. Cultural significance is not reliant upon the medium upon which it is expressed, so why the distinction?
 - The ACC is of the opinion that the right of Indigenous people to make their own choices about their culture is paramount
 - The ACC points out that there is demonstrably no consensus in the Indigenous community which supports the proposed different set of rules
 - In the absence of consensus, the AAAA contends that it is not for a central bureaucratic body, no matter how well meaning, to tell Indigenous people what they can and can't do with their culture
 - The ACC and the full AAAA Board points out that the proper licensing of an artist's design brings much needed income into Indigenous households and that the challenge for the legislation should be to focus on ensuring what is marketed is properly licensed
 - Thus, the ACC does not support attempts to legislate to only allow these items to be made on shore

Recommendations:

- Consideration of the association of various forms of cultural expression with specific communities, groups or individuals should not be dealt with under consumer law. The draft Bill should be amended to exclude this.

- The matters are, however, important. They should be dealt with sensitively in a cultural context and be included in discussions and consideration of amendments to cultural heritage legislation.
- There should be no separate category for what the draft Bill terms cultural artefacts. Cultural artefacts should be dealt with in the same manner as is proposed in the general Indigenous cultural expression section.

Indigenous Cultural Expression

The ACC and full Board are supportive of the framework proposed in the draft Bill for these items.

Points made by the ACC, matters to consider and recommendations are:

- The current wording requires attribution information to be on the item or on the packaging. The fine arts sector formally sets of this information in Certificates of Authenticity (COA), dealing with all provenance related data. This is enshrined in industry standards such as our Aboriginal Art Code and the Indigenous Art Code and has served the Indigenous fine arts market well for 50 years.

RECOMMENDATION: Amend the wording of the Bill to provide for COAs for fine art

- Reproduction is not defined in the draft Bill. Reproduction can potentially be machine based or human and thus, requires clear definition.

Different members of the ACC have different views as to what they would see as acceptable reproduction methods for their own art, however, they are unanimous that legislation should allow reproduction by any means that is acceptable to the artist.

RECOMMENDATION: Include the definition of reproduction in the final Bill. That definition should include hand and machine reproduction

- The vast majority of the authenticity problems come from the souvenir sector. As we saw in the recent Birubi Art case, much of this is brought about by misleading or ambiguous labelling on the items or their packaging. Critical in making any new regulation regime work is to ensure the packaging makes it clear exactly where a product came from and how it came to market.

RECOMMENDATION: Clear protocols must be developed for the labelling of licensed product. The AAAA has members that can assist by providing examples of industry best practice packaging.

Unfair Contracts

The AAAA Board, which includes all ACC members, has seen egregious examples of unfair contracts involving licensing of Indigenous designs. The Association is fully supportive of the proposal to include the right to void unfair contracts, including contracts existing at time the Bill becomes law.

Grandfathering of Existing Contracts

The Board sees an issue with allowing contracts in place at the date of the legislation to continue indefinitely. The ACC is particularly insistent that this must be changed. Failure to do so would see enshrined in legislation the possibility to supply utterly inappropriately sourced art and souvenirs

forever and a day. Grandfathering provisions are inappropriate to the issue at hand, especially as the proposed legislation has been circulated in public and there is a clear opportunity for unethical players to contract prior to enactment of the legislation.

RECOMMENDATION: Existing contracts that breach the Bill must be changed to be compliant within 12 months.

Penalties

The AAAA in general supports significant penalties, however, given the size of even the largest of businesses in the industry, we question whether the possibility to fine a company up to \$10 million for a breach is not disproportionate to the "sin". We think \$10 million is not proportionate, particularly when the maximum for an individual is \$500,000. Three times benefit or 10% of total company turnover is rational and proportionate.

RECOMMENDATION: The Association recommends reducing the figure of \$10 million. If the Committee is of the opinion that \$10 million is appropriate, then the \$500,000 needs to be raised to achieve some sensible relationship between the two.

Committee referred to in 50A (7)

The AAAA is concerned to ensure that the Committee or other body referred to in Section 50A (7) is representative of the entire industry and that it is not heavily weighted to a specific segment of the industry. The AAAA notes the growing trend towards an overemphasis on representation of community art centres and their associates in "solutions" to industry problems. This trend is somewhat perverse as when looking right across art, artefacts and souvenirs, the private sector is the dominant player in the industry.

RECOMMENDATION: Proper consultation within the industry takes place to ensure there is broad and balanced representation on the Committee and that those recruited have skill sets which individually and as a whole are capable of addressing and dealing with the challenges that lie before the industry.

Education Programme

The legislation itself will achieve little if it is not accompanied by funding for an education programme. That programme should target both those trading and the consumer. The Board notes that firstly focussing on educating the retailer will likely significantly cut supply of problematic items to the market, reducing the scale and breadth of the consumer challenge.

RECOMMENDATION: Funding to be put in place for an education programme.

The Association would be happy to discuss our recommendations with the Committee in more detail and to assist in any other way the Committee sees as appropriate. Please do not hesitate to contact me in that regard.

Yours sincerely

Geoff Henderson

President

5 November 2020

The Committee Secretariat

House of Representatives Standing Committee on Communications and the Arts

By e-mail: communications.reps@aph.gov.au

Inquiry and Report into Australia's creative and cultural industries and institutions

The Indigenous Visual Arts Industry

The Aboriginal Art Association of Australia Ltd ("AAAA") serves and represents artists, individuals and organisations that produce, promote, protect and support Indigenous Art, and the cultures that create and nurture that art. We are a not-for-profit, member-based, self-funded organization. Constituted as a national and international industry-wide body, our membership covers a broad spectrum of the Indigenous Visual Arts Industry, with over 200 Indigenous artist members (independent and art centre affiliated), over 50 trade members drawn from commercial galleries, dealers, art centres, licensors and mixed retail outlets marketing fine art and souvenirs and over 400 supporter members.

Our Board of 9 is comprised of 5 Indigenous members, including 4 artists, and 4 non-Indigenous members. The Association also has an Aboriginal Cultural Council on which it relies for advice on matters of Indigenous culture.

The full suite of AAAA objectives is in our Constitution, at S. 3. (<http://aboriginalart.org.au/aaaa/wp-content/uploads/2016/10/Constitution-ofAboriginal-Art-Association-of-Australia-Ltd>)

For all of its 21 years, AAAA has grappled with recognizing, measuring and growing the Indigenous visual art industry's economic, social and employment benefits and opportunities, together with the promotion of ethical practice. We appreciate the opportunity to share our experience and ideas with the Committee and begin with what we see as some fundamentals.

Bedrock Issues

1) Understand Industry Structure and Consider and Involve All Stakeholders in Policy Design

The Terms of Reference for this Inquiry into Australia's creative and cultural industries require the Committee to consider how to recognize, measure, and grow the economic, social, and employment opportunities in the Indigenous Visual Arts (IVA) Industry.

The Industry's structure has recently been described by the Australian Government as part of its development of *The National Indigenous Visual Arts Action Plan* "to support Aboriginal and Torres Strait Islander artists, and their cultural and economic interests."

The September 2020 *Consultation Paper on Growing the Indigenous Visual Arts Industry* notes (at p.5) that:

"Today, the industry is made up of a strong framework of art centres, commercial galleries, auction houses, wholesalers, dealers and independent artists working in a range of ways, including being represented by agents or commercial galleries, contracted as designers or operating as sole traders."

And that:

"The plan will also assist the Government to identify ways it can support the Indigenous visual arts industry *as a whole*."

The AAAA supports that holistic, inclusive approach. Indeed, recognizing, measuring and growing the economic and social benefits and employment opportunities of the IVA industry can succeed fully only if that consideration is of the *whole industry framework*.

A consideration focused too heavily on only one part of the industry would not deliver all of the potential growth and opportunities. Unfortunately, this is where we find ourselves today: solutions continually being crafted, discussions had and policies being set which fail to properly consider and cater to independent Indigenous visual artists and other players included in the Government's own definition of the industry.

Art centres rightly play an important role in that framework. But art centres, while crucial, are only one part of the IVA industry framework. There is significant potential for improvement and growth in art centres, and this potential should be explored. But there is also great potential for economic and social growth through improved support for independent aboriginal artists who work outside the art-centre system and also by supporting the broader IVA eco-system.

Put simply, a complete consideration must look both inside and outside the art-centre model for growth, employment and social benefits.

We note with concern that no mention is made of the souvenir and gifts sector in the definition of the IVA industry. Whilst the sector is not involved in fine art, the area which receives the vast majority of IVA attention, it is critical to artists who earn substantial and reliable income from licensing and to retailers marketing the product. It also forms part of the general Australian tourism experience, a critical sector to the country's economic security.

The gift and souvenir sector must form part of any consideration of the IVA's future and welfare, as must all the other players mentioned in the September Consultation Paper.

2) Good Policy Design and Effective Funding must address all artists

The AAAA exists to help all stakeholders, including Government, to work together to build a vibrant, sustainable, and inclusive IVA Industry.

For that to happen, Aboriginal artists working both inside and outside the art centre model need to be properly included in the policy and regulatory decision making, and properly supported. In this regard, please consider:

- Aboriginal artists work in regional towns and in cities as well as in remote areas.
- Not all aboriginal artists in remote areas have access to an art centre.
- Many artists from remote communities choose to work both in art centres and independently.
- A significant number of remote artists choose to work entirely outside the art centre system, even though their home community may have an art centre.
- Thousands of artists work in regional communities and in cities.

Economic benefits, cultural matters and employment opportunities are equally relevant and equally important to each of the above groups.

Policy that fails to recognise, address and cater to that, including policy and funding practices that drive artists back to a model preferred by funding bodies and/or deprive those outside that preferred model of funding, represents poor policy at best and outright discrimination at worst.

3) A Vibrant Future for IVA Relies on Efficient Use of Finite Funding

The AAAA assumes that substantial additional Government money will not be available for IVA in the short to medium term.

Particularly if that assumption is correct, but also in any circumstances, the challenge as we see it is to use existing funding more efficiently and effectively to find the growth in economic, social, and employment opportunities.

Our submission raises what we see as opportunities for improved efficiencies and effectiveness.

4) Change in Thinking from “Art Production” to “Understanding the Art Buyer” is Critical

If those responsible for formulating and implementing policy are serious about improve economic outcomes, with the attendant improved non-economic benefits, a step change in approach must happen.

Current funding policy is too, some would say overwhelmingly, focussed on art production.

Ultimately what will change outcomes for IVA participants, particularly artists and particularly those artists from disadvantaged backgrounds, is a step change to better understand the art buyer.

Looked at another way, in the long term, the production of art for the sake of production will not change outcomes or at least not change them to the degree possible if funding decisions are, not exclusively but, also tested against the question: “What will it ultimately bring in sales?”

5) Improved Administration and More Equitable Distribution of Funding

The AAAA recognises and is appreciative of the job done by the Office for the Arts and the Australia Council. Both play important and valued roles in IVA.

However, the AAAA believes that there are a number of opportunities for:

- more effective use of the funding dollar
- more equitable distribution of the funding dollar
- an improved client (artist) focus

- better design of programmes to cater for the client group that funding has been set aside for

Funds that never reach artists due to inefficient disbursement processes, funds that go to recipients that have no true financial need for support whilst other artists struggle to survive, funds that artists cannot practically access and funds that languish unspent in times of dire need will not maximise economic and non-economic opportunities.

All of these can be addressed within the existing IVA structural framework, however, to do so will require a change in attitude and a change in approach.

We now address the items the Committee is asked to consider.

How to recognise and measure economic benefits and employment opportunities in the Indigenous visual arts industry

Recognising economic and job opportunities will happen properly only if all Indigenous art, and all Indigenous artists, are included in our consideration going forward.

As discussed above, proper consideration will include the whole Indigenous visual arts ecosystem - art centres, commercial galleries, auction houses, wholesalers, dealers, retailers, the gifts and souvenirs segment and artists working in a range of ways, including being represented by agents or commercial galleries, contracted as designers or operating as sole traders.

Measurement of the economic benefits and employment opportunities of IVA has been a challenge that has proved beyond many bodies, including consultants specifically retained to address the issue, over many years.

The AAAA has a simple and non-burdensome suggestion for how measurement of the sector could be achieved - use BAS submissions as a tool by including in the standard BAS an additional box for an industry code and, where appropriate, a sub-code. For example:

- an Aboriginal art gallery would simply choose that business code from a list,
- a mixed retailer would specify retail as the primary industry code and could then be asked to break out the sales number by category. Even indicative break outs would be an improvement
- an auction house would do similar to the above, but split out between Indigenous and non-Indigenous
- an artist would specify that they are an Indigenous artist

We recognise that one group would be missed, specifically Indigenous artists residing in the remote tax areas – they have an ATO exemption from quoting an ABN when selling their art. Nonetheless, this simple mechanism would give the IVA and others a starting point for measuring and valuing economic contribution.

How to grow economic benefits, social benefits and job opportunities in the Indigenous Visual Arts Industry

AAAA offers the following summary of what we see as the basics:

1) Changing the Lens through which we view IVA from “cost” to “investment in the future”

Much policy looks at IVA from an arts perspective and an employment perspective. Those perspectives are relevant, but IVA is far more than this. It is a national treasure, something utterly unique to this country, something of enduring cultural worth and something to be shared and celebrated. Aside from the Opera House and Harbour Bridge, what else that is manmade in this country truly has the capacity to move the dial for residents and visitors to Australia? Within the arts, is there a single other sector that is on people’s radar more than IVA?

This “natural advantage”, built upon intelligently with astutely funded, imaginative and well targeted policy, can transform IVA and with that change outcomes.

Part of the challenge is to stop viewing it as a cost and see it as a long-term investment that will not only increase income in the arts but that also has the potential to benefit all Australians through the flow on benefits of promoting something so unique.

The AAAA does not have access to the figures, but we understand that tens of billions are spent on fighting Indigenous disadvantage each year and several billions on Indigenous business-related initiatives. How much of that is in IVA? A minuscule proportion. The AAAA struggles to identify other Indigenous related opportunities outside IVA that offer such a natural fit for a group of people seeking to self-determine and build a better future on their own terms. So, why are we not spending more on something that can deliver a long term dividend and actually reduce cost by reducing the numbers of those suffering disadvantage?

2) Focus on the IVA Consumer not on Art Production

The Indigenous visual arts market can grow sustainably only if people want to buy the art produced. This sustainable growth, versus growth of supply fueled by grants, is essential in an environment of finite funding.

Current policy and grants funding tends strongly towards the production-centric with the result that scarce funding is all too often used to produce art that does not sell.

The AAAA contends that the production of art that does not sell ultimately does not change the game for those that government and government funded bodies are trying to support.

The AAAA recommends that there be a substantial move towards a focus of developing and supporting markets, identifying IVA customer interests and needs and then working with funding recipients to translate that into actions at both the supply and retail ends.

3) Growing general IVA awareness and developing markets

There is still massive opportunity to grow the awareness of IVA nationally and internationally. Growth of awareness will lead to growth of markets, sales and improved outcomes. It forms a fundamental building block for the future of IVA. Opportunities include:

- a) **Exhibitions locally and internationally.** Too much of our visual arts dollars are spent on average quality or same old, same old exhibitions where we spend scarce funding importing yet another, for example, Impressionist exhibition from overseas. On the other hand, what portion of our visual arts dollars are spent promoting IVA, our most unique, known and easily exported national art form, overseas?

The AAAA recommends a substantial change in approach to how we spend visual arts exhibition funding by:

- i) focusing far more spend on home grown IVA exhibitions rather than importing the same tired themes that seem to be favoured by public galleries
- ii) actively and boldly exploring international exhibition opportunities with shows that draw from the massive public (and perhaps private) IVA collections in this country. That is, turn our visual arts mentality around and start to export blockbuster shows.

The biggest breakthrough in the international market in the last 15 years happened only recently, with the shows American actor, Steve Martin, and New York gallerist, Larry Gagosian, put on. They have demonstrated what is possible and the level of interest in IVA.

AAAA gallery members can confirm that this interest has directly converted to markedly increased overseas enquiry and sales. Naturally, that has increased the flow of funds back to artists. The correlation is striking.

An Australian Government supported programme has the opportunity to build off the back of Gagosian's initiative, further educate international art lovers and to deliver long term benefits to IVA in Australia.

- b) **Establishing a dedicated National IVA gallery.** It is a matter of national shame that we don't have a national gallery for one of the most important worldwide art movements of the last 50 years. The NT initiative has deteriorated into infighting and appears to be going nowhere and South Australia's "National Aboriginal Art & Culture Gallery" appears to be more about South Australian art and culture. A national gallery would not only showcase the treasure that is IVA, a matter of cultural importance, but would continue to raise awareness locally and for international visitors. It is hard to believe that an increase in awareness would not lead to increased sales.
- c) **Better showcasing and increased emphasis on IVA in state galleries.** As an example, the Art Gallery of New South Wales (AGNSW) currently has 70 Indigenous artworks on display in a basement room at the furthest corner of the gallery from the entry. According to the AGNSW website, this is less than 7% of total works on display at this point in time. Less than 7%; for the only art unique to this country; and stuck in a basement room. In the AGNSW's case, simply giving more prominence and increasing the amount of works on display would be a useful step forward. The current extension represents an opportunity to rectify this.
- d) **Reset on acquisition policies.** The AAAA questions the sense of finite acquisition funding being used to buy average quality international art. More money can and should be directed towards high quality IVA, driving and maintaining the point of difference we have as a nation.

As part of this change, it is important to ensure funding and acquisition policies at public galleries and museums accept all Indigenous visual art on its merits, not on the basis of its source of creation. Funding should be expressly trying to broaden representation – to reflect the full diversity of Aboriginal art and Aboriginal artists.

- e) **Strong Tourism Australia focus on IVA.** As already stated, we know IVA is unique, we know that Australians and internationals are interested in it and we know that many international visitors that are aware of our unique IVA seek it out and purchase it. The AAAA believes that it warrants forming one of the key building blocks of our promotion of Australia to overseas visitors.

4. Increase public confidence in IVA

The basics of marketing state that people are more likely to buy products they have confidence in. Marketeers are also taught to talk about the strengths of their product and not attempt to sell their own goods by disparaging a competitor's product.

Buyer confidence in IVA has and is repeatedly damaged by well-meaning but ultimately damaging rhetoric and campaigns that ignore these tenets of good marketing.

The Industry has a role here. It could learn not to conduct disagreements in public, and learn to use words that reflect an understanding of consumer behavior. Education on this as part of programmes run by bodies such as Desart to better understand the market and consumer behavior would benefit the industry and ultimately benefit the artist.

A better functioning, more representative and more usefully qualified IAC Board can also play a role in building consumer confidence in the industry. 'Fake art harms culture' was a headline grabber. But through lack of thought, that campaign unnecessarily damaged trust and consumer confidence in the art end of IVA when the problem exists in the tourist art/craft/souvenirs sector.

5. The need for action on existing IVA initiatives

The AAAA is most concerned about the lack of action on the findings of the Senate Inquiry into the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019.

This Bill was introduced to the Senate by Sarah Hanson-Young in an effort to address the issues in the souvenir sector highlighted in the Fake Art Harms Culture campaign (see above). If successful, progress would have been made on keeping fake product out of the market, something essential to building and maintaining confidence.

In short, the Inquiry concluded that the issue was of great concern and that more consultation needed to take place.

The AAAA, which wrote a submission, appeared in person at the Inquiry, is not aware of any concrete effort to consult on this important matter subsequent to the Inquiry's report.

If government is serious about changing outcomes, it is essential that when Inquiries are held and indicated actions noted, that action is taken and issues addressed.

The AAAA asks, when will the consultation take place?

6. Changing the Grant Landscape

The AAAA observes that in many cases IVAIS grants appear to be seen as the end game rather than a step on the road to financial sustainability. Better leveraging grant funding into financial outcomes can have dramatic effect on the artists and communities involved.

As an example, contrast grant funding at one successful art centre (c. \$420k for year ended 30/6/19) converted into c. 7.5 times that funding in third party sales (c. \$3.14 million) versus the situation in Queensland art centres where on average over 60% of revenue comes from the grants themselves.

Put another way, \$1 in grant funding at the successful art centre delivered \$7.50 in sales (excluding any grants) versus in Queensland where \$1 in grants generated less than 60 cents in third party sales.

If we are striving to change outcomes for IVA, we can see by the above example that the opportunity is immense and there is a chasm between effective use of funding and areas where there is a striking lack of return on grant funding.

Ways to change the grant landscape include:

a) Improve Return on Grants

Regardless of change or absence of change in the quantum of government funding support, the aim should be to optimize the effectiveness and the efficiency of existing funding.

According to a recent Desart report (Financial Snapshot of Aboriginal and Torres Strait Islander Art Centres FYE2019 – published March 2020):

- In 2004/5 around 20% of total art centre income came from grants → \$1 in funding generated \$4 in third party sales
- By 2018/19, over 40% of total art centre income came from grants → \$1 in funding generated \$1.50 in third party sales
- The return on the grant dollar dropped by 60%
- Normally, one would expect improved outcomes over time as learnings occurred and were shared and best practice was rolled out
- Potential benefits are being missed and opportunities for better outcomes wasted

Yes, some of this is driven by Indigenous employment related funding for art centres, but a drop of 60% indicates a failure on behalf of funders and funding recipients.

The first step in addressing this and improving outcomes is to recognise that a problem exists. The second step is to dedicate resource to uncover the reasons and act on them. Many of the suggestions contained elsewhere in this document would help improve the return on the grant dollar, so they have not been listed here. One, however, stands out and warrants mention at this point:

Where is the team that is travelling from art centre to art centre gathering and communicating best practice and how can such an approach also be used to better outcomes for independent artists?

With a budget of over \$20 million, it can't be said that IVAIS cannot afford it. In fact, based on the marked decline in effectiveness of grant funding, it seems fair to say that the IVAIS cannot afford not to support such a team.

b) Road Maps and Milestones

The Association is not aware of any system of “road maps” that recipients can, and are expected to, follow as regards the development of their business following the receipt of a grant.

Put the other way around, the absence of a cohesive road map that sets expectations and KPIs for grant recipients regarding matters such as return on grant investment sales-wise, results in poor or sub-optimal return on much IVAIS funding.

The AAAA believes that a system of clear road maps and milestones that lead to better economic outcomes should be put in place, in particular for recipients of ongoing funding. Development of such road maps would be part of the remit of the best practice team.

c) Grants only when needed & re-purposing

It may seem unfair to penalize the successful, but as part of a change in attitude, particularly in a finite funding environment, surely there must be some point where funding should be directed elsewhere.

As an example, is over \$300k of annual IVAIS funding justified in a situation where:

- at the end of the previous financial year, the recipient in question had over \$1 million in the bank;
- the recipient had over \$1.3 million in retained earnings;
- the recipient had in the previous financial year earned a trading profit of over \$200,000; and
- artists, the company owners, are paid in excess of 60% of revenue from the sale of their art.

In this case and in other similar cases, there is an argument that the job has been substantially done, the business is running successfully and the funds should be repurposed to areas of greater need.

d) Grants not a Panacea to Fund Initiatives

The AAAA has observed that grants often seem to be regarded as the only way an important initiative can be funded. Of course, this is often so, but the Association believes that there are times where art centres in particular have the financial wherewithal to fund initiatives internally. In a finite funding environment, it is critical that grants be expended where most needed and also where most justified. Expending them on recipients that have the wherewithal to fund an initiative themselves, albeit perhaps over a longer period, cannot be justified in the current IVA environment.

There is a myriad of ways outside of loan finance that small businesses Australia wide fund initiatives. The AAAA contends that there is an opportunity to examine other ways of funding initiatives, for example by utilising pro-bono financial advice. We would be happy to further discuss ideas around this.

e) Where is the dedicated funding for Independent Indigenous Visual Artists (IIVA)?

The IVAIS scheme essentially deals with art centre/art centre style funding and support. It is a dedicated fund, or, to all intents and purposes, run as one.

On the other hand, IIVA are forced to compete for funding with non-Indigenous visual artists for Australia Council funding. There is no discrete funding pot for IIVA.

Why? Why are IIVA treated differently and discriminated against?

The Federal Government's Covid-19 response demonstrated the stark difference in treatment:

- Art centres were allocated \$7 million in much needed funding, something the AAAA lobbied for. That funding was automatically allocated. No application was required.
- IIVA were required to compete via a competitive application process with other non-Indigenous visual artists for an Australia Council funding pot which totalled \$4.5 million.

It cannot be said that IIVA are any less worthy of support than artists working through art centres or that support of IIVA will not lead to better financial, community employment outcomes.

IIVA need support and deserve a dedicated funding pot.

The AAAA notes that one of the tests required to be applied to funding administration is whether it is ethical. The AAAA maintains that discriminating between these two groups of artists in this manner is unethical and should be righted.

7. Utilise existing avenues to market and to expand distribution

Simply put, there is a logjam in getting art in front of a willing consumer for many emerging and mid-career artists. Many artists that indirectly receive funding through IVAIS for their art centre are not getting a chance to develop and prosper because of the distribution model typically used. On the other hand, well established, ethically operated galleries are crying out for quality art and are motivated to give emerging and mid-career artists exposure.

Obviously, this situation has a deleterious effect on outcomes for artists.

Contributing factors to the problem include:

- Restrictive distribution practices, unfit for IVA purpose, employed by many art centres. Many art centres refuse to distribute through multiple galleries in a city/area despite the fact that there is no possible way that multiple art centres, with tens and sometimes hundreds of artists each, can possibly provide adequate representation and market access for their artist owners through the current small cohort of galleries.

The model currently used is based on the non-Indigenous model where single galleries representing a small number of artists each hold periodic exhibitions featuring an artist's latest work. The difference between this and representing an art centre with sometimes hundreds of artists could not be starker.

- The absence of road maps to financial sustainability and rusted on annual funding "entitlements" mean that there is no pressure to improve performance by improving distribution and giving all artists funded by IVAIS a chance to prosper and grow.

- a tribal mentality has been allowed to develop where elements of the industry, typically non-Indigenous, have entrenched positions and will not do business with participants outside their “tribe”. Distribution wise, this has manifested itself in the current restricted gallery cohort.

Reorganising, freeing up and expanding distribution represents a significant challenge and a significant opportunity for the industry. It would also be complimentary to the recommendation to raise awareness via public institutions, providing increased retail exposure to a willing consumer.

The AAAA does not support the current approach where scarce grant funding is being expended to fund the establishment of art centre only retail outlets when at the same time commercial galleries are starved of stock and independent artists are deprived of grant-based support. Essentially, taxpayers’ money is being used to replicate a perfectly good road to market that already exists. To put this in perspective, in year ended 30 June 2019, over \$820,000 of Federal grants, together with over \$350,000 of state government grants was directed towards the establishment of a retail outlet together with as yet undisclosed funding for the 2020 year and beyond. Simply put, this is profligate and unnecessary and unjustifiably and unconscionably concentrates even further grants in the existing group of hands. The AAAA recommends that initiatives such as this must be self-funded or existing channels to market used.

8. Better use of Human Capital

Another way to maximize spending effectiveness would be to ensure existing skills are being used as efficiently as possible. People should be concentrating on what they are skilled at and trained for.

Currently, the skills required in art centres are so broad that only the largest can hope to have enough staff to cover the requisite disciplines required to run a successful business.

Routine business matters, such as central marketing, finance and administration, could often be more efficiently managed through local area hubs set up for that purpose, thus freeing up the art centre co-ordinator to focus on creative matters.

The AAAA contends that this would improve quality of artistic output which then would be more efficiently and effectively marketed by specialists in that area.

Arts funding that was serious about using funding to leverage growth would address the matter of the high level of art centre worker turnover or churn. The AAAA has previously proposed the funding of an incubator scheme where prospective art centre workers spend a period in established art centres to “learn the ropes”, thus make them more job ready and lessening the chance that they struggle or fail when confronted with the complexities of running an art centre.

9. Foster artist and commercial development

If the AAAA understands correctly, the objectives of existing Government programmes include allowing remote artists to stay on country, giving artists choice by growing their own artistic skills and developing business skills that lay the foundations for transfer of day to day management of art centres to the Indigenous owners.

The AAAA supports these objectives and makes the following observations:

- Implemented properly and managed well, this can build towards growing economic benefits, creating employment and maintaining culture.

- The previous suggestion for sharing best practice can form a critical building block in working towards this.
- Transitioning to this would be facilitated by implementing the suggestion for centralized hubs for non-arts related matters.
- Encouraging the development of entrepreneurial behavior, typical of a business owner should form part of this. In that regard, refer to our previous comments regarding grants not being a panacea for the funding of initiatives.

10. Maintain the Ability of Artists to Choose

Care needs to be taken that “giving artists choice” referred to above does not result in the removal of choice.

Specifically, current rhetoric from some taxpayer funded art centre organizations and current policy execution and funding practice are, respectively, aimed at/will see the continued and substantial weakening of the private gallery sector, a sector that has played a fundamental role in the development of IVA.

The AAAA contends that choice for artists is lost if their ability to leave country and work independently is removed because there is nobody outside the art centre movement to work with and be represented by.

Current policy and policy execution are taking us inevitably towards that.

11. A Client Focused, more responsive Australian Council

The AAAA asked for artist only input on this matter. That input and feedback is frankly confronting. The Association has not sanitized the feedback as we are of the opinion that it is important to pass on the honest and forthright information we received.

Unfortunately, the feedback received was that the “lived experience” of engaging with the funding grants system channeled through the Australia Council to IIVA is littered with challenges and is in the eyes of artists disheartening at the least and discriminatory, prejudiced and lacking in any accountability at its worst.

In seeking real-life examples from our members, the resounding response was “why bother” and “the money only goes to the administrators that sit behind emails or their mates”. It seems this “funding for mates” perception is very common.

To provide the Committee with a specific example, we asked one of our artist members to recount their recent experience with the Australia Council in seeking much needed COVID relief assistance and to provide recommendations on the matter. What follows comes from their desk.

I live in regional Australia have 2 children under 5 years and am pregnant with my third child. I have a mortgage and usually a good earnings capacity as a professional artist practitioner.

During the first iteration of the COVID-19 crisis, my husband (the main income earner) was put off work, as were many contractors in the Australian business landscape. This was a massive financial blow to our household income, but I still had two scheduled exhibitions,

accounting for almost 12 months of work. This is an investment of well upwards of \$50,000 in my labour time and materials costs. Unfortunately, both of these exhibitions were, quite rightly, turned into “online only” opportunities with absolutely no guarantee or historical roadmap/data to produce any sales whatsoever. Both the exhibiting galleries had no experience in running solely focused digital exhibitions and these exhibitions counted for both gallery’s first trials at doing so.

I used previous advice I had received when being unsuccessful with the Australia Council for funding, which was to call the Aboriginal administrators at the funding body and seek tailored advice to put together my submission. I did this and engaged in two phone calls of around an hour each, putting together what the administrator said were two “no brainer” submissions. One submission was for instant relief of \$2,000 (better than nothing, but not enough for a family of 4 with no income to survive on), and the second to pivot my arts practice into a more dedicated online platform allowing me to sell my artwork on printed homewares specifically for babies and children which I already had a ‘markets’ following and historic sales record of achievement.

Both submissions were declined. When feedback was requested, I was told both verbally and in written format, via email, that there were too many submissions for the admin team at Australia Council to provide any feedback and no recourse could be entered into. Being desperate, upset and confused as to why my “no brainer” submissions were declined I pushed for an answer as to how I didn’t / couldn’t qualify. The person I spoke to (who was not the Aboriginal administrators meant to deal with Aboriginal people, because I was told those guys were on “other stuff”), told me: “I seemed like I’d do ok, I was successful enough, and to concentrate on trying to promote my online exhibitions using my socials” and basically pray for the best.

I ask you, if I don’t qualify, why then do non-Aboriginal artist colleagues of mine who are single, have no dependents to look after and no mortgage to pay receive this ‘relief’ funding? Those people are in a far better position to support themselves financially, and indeed many of them had substantial savings, so obviously the COVID-19 relief funding was NOT means tested either. In asking these friends why they even submitted for funding given that they didn’t need it, one told me “they’re giving away free money, why not take it”. This person is one of those artists on all the funding lists. The industry has a name for them, we call them the ‘frequent flyers’.

This is but one frank account, one that can be matched by hundreds, but much more likely thousands of others.

The following would go some way to rectifying the issues IIVA face with the funding process at Australia Council:

- Funding limited to once every 3 years. A recipient may only apply and be successful for funding once every three years
- Dedicated IIVA fund administered by Aboriginal people for Aboriginal people – surely some of the enormous pool of money put aside as dedicated Art Centre funding could be split to create a similar pool of dedicated funding for the IIVA? In fact, it is discriminatory not to.
- Reduction in administrators – it seems the Australia Council pays for far more staff than it does artists

- Specific and quantifiable check lists of what will / will not be funded each round so that artists can best place their efforts toward activities likely to be funded instead of flying blind.
- Accountability. If each artist has the time (hours, days, weeks) to provide a substantial submission for funding, and if we are to believe the true objectives of the Australia Council are to buoy the arts industry and drive success, then it follows that feedback should be detailed and provided to applicants as an educational tool. This is far more beneficial than some of the activities listed below that are NOT helpful and are a waste of much needed artist funds. After all, every submission is read, it takes only a small amount more time to put feedback together against each submission as you go.
- Artists need to have faith in Australia Council. They need to trust the Australia Council. Unfortunately, the COVID-19 relief funding disaster has done even more damage to what was already perceived as a discriminatory, corrupt and awfully unfair system.

What the IIVA do NOT need from the Australia Council:

- Any more training in how to write a submission, use the online system or FAQs. This is administrative fluff that uses much needed artist funds to prop up administrators' roles.
- Any more online sessions where all the same frequent flyers check-in to grease the wheels of the administrative machine that is the Australia Council. Again, this is a waste of artist funds on administrative services NOT required by artist.
- Any more EDMs sent out (usually once or twice a week) telling us times are tough but the recipients of the latest funding round are doing great.

As previously pointed out, some of the points raised are confronting and use strong language. The Association believes that in order to better serve "the client", that is the artist, the Australia Council will benefit from understanding the above artist feedback presented in an unfiltered fashion.

12. Reform of the Resale Royalty Act

The Act came into effect over 10 years ago. Prior to its enactment, there was insufficient consultation across the IVA by the incumbent government and precedents from already operational and well-functioning schemes from overseas were ignored. This resulted in many weaknesses in the Act. These weaknesses have marked and unnecessary negative impacts on both artists and gallerists and dealers.

The AAAA has consulted with its artist and dealer members and developed an aligned position that addresses weaknesses in the legislation and "works" for both artists and dealers. We have had one conversation with advisers to the Federal Minister and plan to put our recommendations in writing. Suffice to say at this point, those recommendations will focus on improving direct economic benefits in the IVA as a whole.

Please note, based on the most recent information provided to the Association by Copyright Agency, AAAA dealer members make up more than 50% of all resale royalty paid in respect of Aboriginal art.

13. Growing employment opportunities in the IVA industry

What is a sound approach to growing Indigenous employment, and what training should be provided?

The AAAA's view is that training should address what matters most in the wider IVA ecosystem and be aimed particularly at creating a growing, prospering, sustainable IVA industry, based on a well-informed Australian population, confident about and proud to share its Aboriginal heritage and cultures.

That training would cover:

- The basics of financial sustainability,
- Basic business doctrine and discipline,
- An understanding of why government funding should protect sustainability by focusing on consumption, not production,
- An understanding of marketing principles and practice,
- An understanding of how to use information and communications technologies,
- What it means to be a customer-centred service, and how to do it.

Independent Indigenous artists and urban Indigenous artists should also be able to readily access such support and training.

The best mechanism for ensuring cooperation and delivery of policy between layers of government

The optimal mechanism for ensuring cohesive government policy design and delivery in the IVA industry is high-quality policy and regulation-making that responds to well-informed customers in a transparent and competitive market place.

High-quality policy and regulation can't happen without high-quality decision-making, which means:

- proper prior analysis of impacts, involving Indigenous artists and parties from *all* of the IVA industry, not just selected parts, and all relevant government layers;
- proper consultation – with *all* affected parties, including relevant government layers;
- proper evaluation - adhering to the Productivity Commission's newly released *Indigenous Evaluation Strategy*, especially the need for evaluation findings to be consistently used to inform all Indigenous policy and planning processes – locally, regionally and nationally.

Get that decision-making right and cooperation and coordination will follow as natural by-products.

The AAAA has no comments on the remaining matters set out in the Terms of Reference except to note that implementation of the above measures and recommendations would put the IVA industry in a far better position to navigate shocks such as Covid-19.

The Association remains at the Committee's disposal and is available to answer any questions the Committee may have, including by appearing before the Inquiry.

Geoff Henderson

President

30 December 2020

Office for the Arts

Visual Arts and Design Section

By email: IVA@arts.gov.au

Response to Consultation Paper on Growing the Indigenous Visual Arts Industry

The Aboriginal Art Association of Australia (AAAA or Association) serves and represents artists, individuals and organisations that produce, promote, protect or support Indigenous art and the cultures that create and nurture that art.

Our national membership covers a broad spectrum of the Indigenous visual arts (IVA) industry, with over 200 Indigenous artist members (independent and art centre affiliated), over 50 trade members drawn from commercial galleries, dealers, art centres, licensors and mixed retail outlets marketing fine art and souvenirs and over 400 supporter members.

Our Board of 9 is currently comprised of 4 Indigenous members, including 3 artists, and 5 non-Indigenous members. The Association has an Aboriginal Cultural Council (ACC) on which it relies for advice on matters of Indigenous culture. The ACC's existence and powers are enshrined in the AAAA's Constitution, which can only be changed with the agreement of both artist and trade members. Artists' say in the running of the AAAA is and will be enduring.

The artists have dedicated and meaningful representation on the Association Board and their interests are also protected and promoted by an Indigenous Patron and the ACC. Artist and other Indigenous members come from diverse geographical backgrounds, ensuring the AAAA can draw on different perspectives and cultural nuances from across Australia.

Together with the promotion of ethical practice, for all of its 21 years of existence, the AAAA has grappled with how to support and grow the IVA industry's economic, social, cultural, and employment benefits and opportunities. We have drawn on this deep and long-lasting experience, coupled with the Association's diverse membership to formulate the suggestions and comments made below.

Setting the Scene

Before addressing the Consultation Paper, the AAAA offers the following observations:

- The growth of Australia's IVA industry since the Australian Government began providing support in the early 1970s is a significant economic and social achievement, one to be celebrated, recognised, lauded, and championed.
- The quest for further IVA industry growth starts from a position of strength, not weakness. Well formulated and executed IVA policy is an opportunity to build on a strong foundation.
- The AAAA is pleased that the Consultation Paper addresses sensitive but crucial issues, many of which are complex and contested. The current consultation process represents an opportunity to work through problematic issues in IVA and design a future which not only recognises and respects the diversity of our IVA industry but levels the playing field for industry participants. The industry's complexity and history cannot be allowed to determine the future, but neither can it be ignored in the design thinking.
- The Consultation Paper rightly says it is important that the Plan be based on the views of the IVA sector. The AAAA takes that to mean *all* of the sector, not just some parts of it. We see this inclusive approach to decision-making as fundamental to successful, sustainable growth of the sector.
- Achieving successful and sustainable growth depends on having a correct understanding of the IVA industry structure, how it operates, where the opportunities for growth are to be found and how best to grasp them. The AAAA is pleased the Consultation Paper (p. 5) lives up to its claim of wanting to involve the whole sector. It recognises the IVA industry's structure is today:

“...made up of a strong framework of art centres, commercial galleries, auction houses, wholesalers, dealers, and independent artists working in a range of ways, including being represented by agents or commercial galleries, contracting as designers or operating as sole traders”.

The AAAA supports this definition, although we believe it needs to expressly include the mixed retail outlets marketing fine art and souvenirs, especially given the challenges identified in this area by the Fake Art Harms Culture campaign and the subsequent Inauthentic Art Inquiry.

Allowing for the above comment, the Consultation Paper describes IVA structure correctly. The AAAA fears, however, that not all IVA stakeholders will want that

inclusive definition to be widely known or embraced and certainly not to underpin the design of the future of IVA. We return to this concern throughout our submission.

- There is one other contextual issue we wish to explore and clarify. The Consultation Paper (at p. 5) recognises the contribution of Aboriginal and Torres Strait artists to their communities:

“Aboriginal and Torres Strait Islander artists are also investing money earned through art back into their communities. Artists and art centres are now essential contributors to important social and health initiatives on Country, strengthening community outcomes, and investing in their communities’ futures”.

Perhaps the above was not written with this in mind, but independent Indigenous visual artists (IIVA), like art centres, have always done and continue to do all that set out above. They may do so via different mechanisms than via an art centre, but they contribute and support nonetheless.

Some in the IVA industry nevertheless assert that IIVA do not deserve support as they do not contribute to and strengthen their community. Of this group, a section goes on to say or suggest that the only place the consumer can source ethical Aboriginal art is via an art centre, using language such as ‘buy from artists in art centres, or buy from the people who exploit them’ and casting aspersions on the cultural worth of art produced by artists outside the art centre system.

Putting aside the reaction of gallerists to this pejorative language, statements such as this are deeply offensive to the thousands of artists that work outside the art centre system. In addition, many artists working via art centres also have family working independently. Does any balanced and responsible person truly think that one family member wants to see another’s livelihood put at risk by such misleading and divisive language?

It seems that such misguided language is aimed at gaining a competitive advantage at the expense of independent Indigenous visual artists (IIVA).

The AAAA contends:

- All artists contribute to their community, whether “on Country” or elsewhere.
- No artist deserves to have the cultural worth of what they create demeaned.
- There can be no place in our industry for divisive, demeaning language, particularly from industry participants in receipt of millions of dollars of taxpayer funding.
- This language undermines consumer confidence and actively and seriously undermines the growth prospects of the industry.

The AAAA recommends that in developing and executing policy, the Inquiry, Federal and State Governments, the Office for the Arts (OFTA), et al recognise the contribution and importance, cultural, community and otherwise, of IIVA and ensure that policy is properly balanced and considers and addresses the needs and claims of all industry participants.

The AAAA also notes the following as regards the forthcoming Productivity Commission study into the nature and structure of the IVA market: a key point should be to determine if such claims have been undermining consumer trust and confidence and therefore retarding growth of the IVA Industry, and whether exposing and preventing such conduct will enhance future IVA growth and sustainability.

Terms of Reference

Before addressing the themes and questions we have been invited to comment on, the Association believes it is important to question the wording used in the Consultation Paper and to challenge those responsible for the development and execution of policy to broaden how they think and talk about the industry and its future.

The Association is most concerned that, although the Paper talks about IVA industry growth and the development of an IVA Action Plan, when one examines the detail, the language used too often fails to talk about industry growth or an industry action plan. Instead, it seems to primarily concern itself with one sector of the industry/one group of participants. If left unchanged, this would represent an extremely disturbing continuation of what the AAAA contends to date has been a skewed approach to the industry and the discriminatory treatment of certain industry participants.

Some examples of the worrying language used in the Paper are set out below.

Consultation Paper Contents

As commented on above, in sketching a picture of the IVA industry, the Paper takes the time to define the industry as including, inter alia, commercial galleries, auction houses, wholesalers, dealers, and independent artists. The contrast then between how the industry is defined in the Paper and what has been done or is being proposed is striking. Consider the following:

- Every metric quoted in the introductory notes deals with art centres and artists working with art centres. Not a single metric mentions IIVA, presumably because, as we know, IIVA are expected to compete for funding with non-Indigenous artists.
- The Government response to Covid mentions only measures taken to assist art centres, measures which, by the way, the AAAA also lobbied for.

There is no mention of funding designed to directly and specifically assist IIVA.

That is because there were no such measures taken.

This is a stark reminder of where an approach to our industry which concerns itself with only one group of participants takes us. That is, to discrimination and ultimately to disenfranchisement.

- The digital labelling trials discussed involve only Desart and three art centres. When setting up the trial, the assumption seems to have been that, if it works for a remote art centre, it must be fit for purpose elsewhere. Of course, Desart and art centres are important to this issue, but much of this product comes from other, non-remote and non-art centre sources. Why were other industry participants not directly involved in the trial? This question is raised against a backdrop of:
 - the AAAA's substantial contribution to discussions on the matter via its submission on the matter and its subsequent appearance at the Inquiry; and
 - the AAAA's membership base including four substantial players in this sector whose market knowledge and expertise surely would have resulted in better outcomes.
- In the Capacity Building section, we are told that

"... there need to be clear professional pathways for Aboriginal and Torres Strait Islander artists and arts workers."

The document goes on to remind the reader that the IVAIS scheme is funding and supporting art centres, workers in art centres, art fairs supplied by art centres and organisations that service primarily (dollar wise at least) art centres. The reader is then told that the intention is to investigate ways to

"... support art centres in a targeted fashion."

The AAAA is resoundingly supportive of what is being done and the proposal, at least insofar as it relates to the section of the creative part of our industry that is art centres. However, we struggle to adequately express our utter dismay, disappointment and disillusionment that apparently IIVA do not figure in the current thinking regarding capacity building.

There are thousands of IIVA who turn over well into 8 figures and are already involved in the industry. In addition to this fantastic pool of talent, our experience is that there is a second group, a vast pool of Indigenous Australians who have started on a journey of reconnecting with their culture. That reconnection logically often involves art as an expression of culture.

The first group is as great a success as art centres and has our admiration in that, so often, their success has been built without taxpayer funding. Surely the plan must be for them to play an integral part in capacity building.

The second group represents both a latent pool of talent and creativity and surely an interesting and worthwhile source of, using the Consultation Paper's own words:

"...Indigenous Australians to tell stories, share culture, understand and explore Country and history, build community, and earn money."

Should we not also be designing a future which encourages and involves this group?

If our suggestions involving capacity building and the role of these two groups are rejected, then, in the AAAA's opinion, it seems that policy would be valuing one Indigenous group's culture over another. Thus, the AAAA contends that any worthwhile plan must look far wider than what currently appears to be proposed.

- Question 7 in the Paper asks:

"Do you get the support and materials you need from your art centre?"

This is a fair question, but it begs another: What about artists working outside the art centre system? For example, a relevant question addressing this sort of topic would be: "If you are an IIVA, do you get the support you need from the Australia Council?"

- Question 11 asks:

"How significant has selling artwork online been for your art centre through COVID-19? How could you improve how your art centre sells work online?"

Again, this is a fair question, but why is the Paper seemingly uninterested in the role of online sales for IIVA?

The AAAA can confirm that its IIVA members have been left with the overwhelming impression that their development and welfare continue to be of only peripheral interest to policymakers and those responsible for executing policy.

The AAAA is deeply disturbed that, if not corrected, the Action Plan will further discriminate against IIVA as well as further imbedding the existing discriminatory approach.

If policymakers are serious about sustainably growing the IVA industry, under current funding rules, they cannot ethically, legally or sensibly exclude IIVAs from actions designed to grow the IVA sector. Furthermore, actions in respect of IIVA cannot be a mere afterthought or something just bolted on to what is being done for art centre-based artists.

As regards gallery and dealer members, the feedback to the AAAA Board has ranged from resigned acceptance to disbelief and anger that a consultation process on IVA industry growth so blatantly ignores the gallery sector. How can a consultation define the industry as including this key stakeholder group, then go on to seemingly ignore it is the construct of the questions presented? A reasonable read seems to be that the Federal Government is exploring mechanisms and developing plans to direct taxpayer funds to investing in measures that further undermine the gallery and retail sector. To do so ignores the massive contribution made by galleries and retailers, overwhelmingly using private capital, to develop and promote IVA, including the development of artists' careers.

The AAAA also contends that strong dealer and retail participants will contribute towards better outcomes for artists: the two groups are not and have never been in competition, they are complimentary.

The AAAA contends that growing IVA and developing an action plan for a vibrant, healthy and sustainable future involves recognising the place and the contribution of all industry participants and then considering and involving those participants in not only consultation but in actions proposed.

If this is not done, then any policy developed cannot be called an Indigenous Visual Art Action Plan.

The AAAA invites the Ministry and OFTA to develop a whole of industry action plan.

The Questions Posed in the Consultation Paper

The Government wants to hear views on all relevant topics with particular areas of interest being grouped into 19 questions under four themes.

Much of what the AAAA can contribute on the topic of Growing the Indigenous Visual Arts Industry was recently provided in our comprehensive November 2020 submission to the House of Representatives Inquiry and Report into Australia's creative and cultural industries and institutions. That submission addresses many of the 19 questions asked by this Inquiry as well as providing the start of an overall roadmap for IVA growth.

Rather than attempting to split that document out and organise it under the 19 questions, we ask the reader to first read it. Of direct relevance to this process are the five ***Bedrock Issues*** we identify at the beginning of the document and the thirteen points we make on ***How to grow economic benefits, social benefits and job opportunities in the Indigenous Visual Arts Industry***.

To the extent that the November submission does not answer one of this Inquiry's questions or where the Association has further thoughts, we now comment under each question.

Theme 1: Sustainable Growth

1. What practical actions will assist to rebuild and to sustainably grow the IVA market?

Virtually the entire November 2020 submission wrestles with this challenge.

Essentially, to achieve ongoing growth, maximise the amount of growth and make that growth sustainable, initiatives need to be designed and implemented in concert.

The suggestions the AAAA made can essentially be divided into:

- Those that drive demand
- Supply related actions
- Regulatory framework and administrative support

Realistically, however, any policy that builds supply and regulation without building demand will never deliver sustainable growth. As we say, production of art is pointless if there is nobody to buy it and or there are no, inadequate or poorly designed avenues to the consumer (that is, to market it).

One additional, innovative and useful idea offered by a member in a recent forum was for the Federal Government to support the (rebuild of the) arts in general by introducing a voucher system similar to the UK's Dine Out Help Out idea. For example, issue a \$100 voucher that can be spent on/towards anything associated with the arts, whether it be a concert, part payment on a beautiful piece of Aboriginal art or something else. The benefits are many but include those of raising awareness, of engaging people with the arts and of providing some much-needed support to IVA market participants. We recognise that only part would find its way to IVA.

2. What do you like or dislike about how the market currently works?

The Association would prefer not to single out specific issues.

The November 2020 submission and parts of the introduction to this submission either directly address the positives and negatives that the Association sees or implicitly addresses its likes and dislikes via recommendations made for a better way forward for the industry.

Having said this, the Association's sentiment and recommendations really revolve around building on good work done to date, acknowledging mistakes made and designing a fair, equitable and inclusive way forward for all participants.

3. What questions would you like answered in the Productivity Commission study?

The AAAA has been invited by OFTA to comment on the draft terms of reference. We intend to use that forum to fully communicate our thoughts. In the interim, we comment as follows:

- The AAAA has for years raised concerns about industry participants who engage in conduct designed to lessen competition and restrict fair Indigenous artist access to the market place.
- We hope this Productivity Commission research study will expose such conduct, the effect of which has been to mislead government, media and consumers and to adversely affect market growth.
- We hope the Productivity Commission will be asked to include sufficient economic and social analysis to confirm that growing the economic and social benefits and

employment opportunities in the IVA Industry can succeed fully only if policy design and execution considers the *whole* industry.

4. Different words have different meanings for different people. Should we use ‘Aboriginal and Torres Strait Islander people’ or ‘First Nations people’ in the Action Plan?

Our consultations with our artist and other Aboriginal and Torres Strait Islander members have elicited diverse and differing responses.

Some prefer ‘Aboriginal’.

Some prefer ‘Aboriginal and Torres Strait Islander’.

Some prefer ‘Indigenous’.

Some favour ‘First Nations Peoples’ (not People).

We have been firmly informed that Indigenous Australians are not homogenous.

What is most instructive when wrestling with this matter is the emerging view that there is no pan-Aboriginality. Aboriginal cultures are as diverse, complex and nuanced as Australian landscapes. Policy, and policy implementation, needs to match the real, and culturally significant, diversity.

The message the Association received is: it is not feasible to use one generic term. Go for flexibility and for accuracy. The ‘right’ name will usually depend on the particular circumstances. The implication is that the Action Plan could safely use all of the four possibilities listed above, but the use should fit just who is being addressed.

5. What do you understand ‘authentic Indigenous art’ to mean? What type of artwork should be included in this definition?

The AAAA has prepared submissions and provided extensive evidence to two previous Inquiries dealing with this matter, the 2017 House of Representatives Standing Committee on Indigenous Affairs into “*The growing presence of inauthentic Aboriginal and Torres Strait Islander style art and craft products and merchandise*” and the Senate Committee Inquiry into the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill, 2019.

The Association has also had cause to investigate this complex and nuanced area in 2018 following a dispute between two Association members. To assist us in resolving the dispute, we called on our ACC for a ruling on the matter. That ruling formed one of the foundation stones for the Association’s response to the 2019 Bill mentioned above.

In all of the above circumstances, what was clear was that there were (and are) diverging opinions on what authentic means and good and valid reasons why different ATSI people have different definitions of what is authentic. There is no overall consensus.

What is clear to the AAAA is that what matters in this discussion is what ATSI people think. It is their culture. The fact that non-Indigenous people, such as gallerists, are

fortunate enough to be able to participate in an industry that draws on that culture does not, in this particular matter, give those industry participants the right to determine what is right or wrong.

The AAAA also contends that in reaching decisions in this complex area, those contributing must be very careful to respect ATSI people's right to choose how they express their culture, that ATSI cultures are diverse and that cultural sensitivities are involved. What is clear for one group may not be for another. Arbitrary rules made against such a backdrop would be problematic.

Another area that requires careful navigation is to ensure the distinction is made in approach, discussion and potential solutions between fine art and the souvenir market.

In summary, what is authentic and what is not is a highly nuanced and emotional matter and we recommend that it be referred to the National Indigenous Arts and Cultural Authority, once that organisation's establishment is finalised.

Where action can be taken in the interim.

However, in the meantime, there is absolute consensus amongst AAAA members on one of the biggest areas of abuse and existing law has already been used to deal with an example. Immediate progress can be made on certain items, typically marketed in tourist shops, sold as Aboriginal souvenirs or art but manufactured overseas using a design that is not Indigenous or that is Indigenous, but the creator has not authorised its use.

No AAAA member nor anyone the AAAA has spoken with considers these items authentic. Furthermore, these items form a very significant percentage of the inauthentic product blighting the market and success in dealing with their removal from the market would represent a major win.

We note the ACCC's successful use of existing consumer law to prosecute Birubi Art on exactly this issue.

In our opinion, no further discussion or consultation is required to progress this. There is nothing further to consult on. The law exists, the precedent for the successful use of the law has been established and the ACCC even trumpets its success on its website. The AAAA contends that it is simply a matter of will, resource and prioritisation.

In the Association's opinion the Federal Government should act to task the ACCC with stamping out the marketing of such product.

More detail on the AAAA's position and useful discussion on the topic can be found in the attached submissions to the 2017 and 2019 Inquiries.

Theme 2: Capacity building

The Consultation Paper's preamble to this section advises the reader that:

- there need (sic) to be clear professional pathways for Aboriginal and Torres Strait Islander artists and arts workers. The AAAA fully concurs.
- the framework of support for artists could be stronger. The AAAA fully concurs.
- the above bullet point involves support for infrastructure that enables the creation of quality, authentic Indigenous art. The AAAA supports infrastructure related initiatives but questions the manner in which the Paper defines what is to be created, who is to create it and the ultimate intent of the use of such wording.
- Via the NIAA, opportunities will be investigated for targeted support for art centres. The AAAA asks "What about IIVA? Are these issues not also relevant for that group also?"

We comment further as follows:

- All four points apply equally to all Indigenous visual artists.
- There can be no continuation of the current discrimination in policy towards and funding of IIVA.
- The NIAA's website informs the reader: "The National Indigenous Australians Agency (NIAA) is committed to implementing the Government's policies and programs to improve the lives of *all Aboriginal and Torres Strait Islander peoples*. (our emphasis).

Policy and policy execution targeted towards art centres only expressly fails the NIAA's own description of why it has been put in place. Let the NIAA truly work for the benefit of all Indigenous Australians, starting with arts policy.

- Given the preponderance of wording in the Paper that addresses only art centres and given the rhetoric constantly pedalled that art coming from outside art centres is not to be trusted, is of questionable cultural worth, etc, etc; the Association is most concerned with the choice of the adjectives "quality" and "authentic" when discussing infrastructure initiatives. We offer the following thoughts:
 - Who gets to define quality? It can't be allowed to be used as a tool to exclude valid industry participants, eg those outside art centres. We do think, however,

that it can be used as part of a toolbox to try to leverage better financial outcomes with a finite funding bucket.

- Improvement in quality through better artist support and training, better understanding of the consumer and translation of the understanding into actions at the creation of art level is a worthwhile objective, but must be applied right across IVA.
- We already know that defining ‘authentic’ to the satisfaction of Indigenous industry participants is problematic. We have pointed out via our various submissions that disagreement on the matter has extended for more than 20 years. Expressing policy and actions with reference to the word authentic and setting that in motion when authentic hasn’t been defined, and is unlikely to be satisfactorily defined in the near future, is surely flawed.

6. 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?

The AAAA has commented on this in detail and offered numerous constructive suggestions as part of our response to the 2020 Inquiry into Australia’s cultural industries.

After further consultation with our members, particularly artist members who work independently in regional and urban areas, we now comment further:

- Some artist members have stressed the importance of and asked for support and training on the business side of art, including pricing, costing, cash flow management, accounting, taxation, legal, intellectual property and artwork documentation standards. In short, “How to run an art business.”
- Training on understanding and use of social media platforms and building general digital knowledge levels have also been identified as a key pillar for raising exposure and building arts practices.
- An interesting and constructive suggestion from one member was to “Find and support Indigenous entrepreneurs who are already teaching Indigenous Visual Artists how to use social media to get their art to market.”
- Other artists have been very clear in communicating that the last thing they want or need is yet another training course. They say “We know what we are doing. We know about the business side. We don’t want scarce funding wasted on yet another course. We just need monetary help on turning initiatives into actions. Can we please access that and get on with it?” As we point out elsewhere, the industry is not homogenous and the challenges are not the same for everyone. Good policy will recognise and cater to that, yet avoid an approach which is too granular.
- There does seem to be a multitude of programmes, inside and outside the arts, that do/potentially do offer help. Sometimes artists are not aware of the programme and sometimes the programmes are not aware that Indigenous artists are potential clients. The AAAA suggests that a central webpage relevant to IVA be established. The webpage could detail all resource, programmes, funding, initiatives, etc available. It

would build over time. The AAAA wonders whether, with its overarching knowledge (and often carriage) of programmes in the space, and given its *raison d'être*, the Australia Council is not the appropriate body to explore this and bring it to life.

- We recommend that, before we design and implement yet more programmes which may duplicate what is already out there, the step directly above should be worked through.
- Another member questioned: “Why are there still so few Aboriginal people in leadership and senior management roles in the art centre system? Almost 50 years down the track, everyone is still saying there should be indigenous art centre managers but where is the progress? If there are barriers to this skill transfer, those barriers should be identified, along with the immediate practical steps to begin removing the barriers. Removing the barriers will probably be a long-term process but it needs to transparently begin. This skill building process should be publicly tracked.”
- If the government is serious about developing pathways for artists, art centre based and independent, the AAAA notes that there are role models out there inside and outside the art centre system. Why not utilise that knowledge?

The AAAA’s ideas and points made are a starting point but we suggest that as these matters are so vast, so complex and so vital to successful, sustainable growth, they can only be addressed thoroughly and adequately through a specific consultation process – hopefully under an ongoing Action Plan umbrella. We are also of the opinion that if this approach is not taken, definition and implementation will be patchy, inconsistent and will not maximise outcomes. As a final point, such a process will only succeed:

- If indigenous artists become invested in the process; and
- If there is a properly representative range of Indigenous Visual Artists involved.

7. Do you get the support and materials you need from your art centre?

You will obviously get ample input on this from art centres and associated support systems. Therefore, the AAAA will address the question from an Independent artist’s perspective.

In short, IIVAs are not supported enough.

Experts have been advising governments since at least 2006 that the main area for potential growth of Australia’s Indigenous visual arts and craft sector includes

“...providing support to urban Indigenous arts practitioners who have lacked appropriate support...”.

[See Prof J. Altman’s Submission to the Senate Committee, *Inquiry into Australia’s Indigenous arts and craft sector*, at p.8]

The Association believes that a dedicated IIVA section within the Australia Council, as recommended in our November 2020 submission, should be tasked with progressing this.

8. Is there more that can be done to encourage the development of Indigenous-owned and operated businesses in the industry?

We cover this in our earlier answers and in the submissions listed above. In short and in addition to what we have been told you will do, we recommend that you include IIVA in policy, funding programmes and actions.

Theme 3: Access to Market

The Association's submission to the 2020 Inquiry into Australia's cultural industries covers much of the matter we are asked to comment on under this heading, including freeing up avenues to market and making suggestions on growing awareness, including via international promotion.

9. What can be done to assist artists to better connect with the art market?

Three additional points relevant to question 9 were made by members during our recent consultation sessions.

IVAIS Funded Art Fairs

Both artist and gallery members have expressed concerns about the growing profile of these fairs.

From a gallerist point of view, especially in a small market such as Canberra, taxpayer sponsored art fairs have resulted in longstanding galleries losing significant chunks of business. One gallerist member commented that they receive no grant funding, yet are up against not only art fairs funded by the taxpayer but major museum exhibitions that double as sale outlets for art. For their business, the playing field is most uneven.

From an artist perspective, there are winners and losers. Winners are artists from taxpayer funded art centres. Losers are artists from the regions in and around where the fair takes place.

The AAAA supports art fairs. They tick boxes, such as raising awareness and providing avenues to market, that we are promoting as essential to the development of a sustainable industry. However, we think that OFTA should look at a model where:

- The fair promotes/primarily promotes artists from the region where the fair is taking place
- Galleries from that local area that by definition support artist careers and provide a living for not only the business owner but for artists be given the chance to participate

Perhaps we even end up with a number of Indigenous art fairs that showcase IIVA promoting their own businesses, galleries and art centres. Looked at another way, why is the idea only worthwhile supporting for art centres and not other industry participants? It would certainly raise the industry's profile and showcase the diversity and depth of offer found in IVA.

Look to create emotional connection with ATSI art when designing museum shows

Better connection of artists to markets (the consumer) will be assisted if major exhibitions use formats that strive to create emotional connections to the art showcased. AAAA member experience is that once an emotional connection is created with art or an artwork, the barrier to purchase is dramatically reduced.

Artist and Trade members alike commented on the impact the National Museum of Australia's *Songlines: Tracking the Seven Sisters*. They felt it was a great example of what an exhibition showcasing, in this case, Aboriginal art could and should look like. Members commented on another innovative exhibition, which distinguishes itself with its interactive element, and which can contribute ideas applicable to Indigenous art, is the *Van Gogh Alive* exhibition.

Some readers may feel that the connection of the above point to question 9 is tenuous. The AAAA opines:

- connecting the artist and the consumer is not just about obvious and direct measures; a myriad of constantly evolving actions and initiatives will build the connection.
- However, the job of policymakers isn't to identify individual initiatives, shows or projects. Their job should be to fund and put structures in place which facilitate those initiatives identification and implementation.

Celebrate and showcase ATSI art's diversity

As the Association has consistently pointed out in this submission, IVA policy and execution together with many of the statements and much of the way questions have been framed in this Paper seems to be heading inexorably towards the funding and promotion of art centres to the exclusion of and at the expense of IIVA and gallerists and dealers.

The AAAA challenges the authors: Isn't it then pretty obvious how you can better connect artists to the market?

Answer: Instead of the current setting which ignores great swathes of IVA practitioners, their diverse cultures and the fascinatingly varied ways they approach their culture and their art, design policy and implement programmes and actions that enable, celebrate and showcase diversity.

10. How can digital technologies overcome the challenges of remote locations?

The AAAA says "Significantly."

IIVA artists from remote and regional areas and those with urban arts practices are already utilising digital technology, particularly social media, to promote their art. This is often in parallel with traditional "bricks and mortar" gallery representation.

The space is rapidly evolving, as is the gallery artist relationship where this parallel promotion is taking place. AAAA members, gallery and artist, are available to discuss this further, if required, including the upsides and downsides for both artist and gallery. And there are both, for each party.

11. How significant has selling artwork online been for your art centre through COVID-19? How could you improve how your art centre sells work online?

This question is directed at art centres, but applies equally to IIVA.

Our artist members that market online advise us that having their own on-line presence or marketing their art through galleries that have a strong on-line presence has been the difference between putting food on the table or being utterly reliant on welfare during Covid.

One artist member commented:

“Digital technology is my friend. Pivoting into the on-line space during Covid has been critical for me.”

12. Is there more that needs to be done to engage with the international arts market as well as tourists in Australia?

In short, emphatically yes.

This topic is considered in detail in our submission to the 2020 Inquiry into Australia’s cultural industries and forms an integral part of the strategy we set out to grow our industry.

13. If overseas activities were to be supported, would this assist in engaging in the international market and do you consider this should be a priority?

Yes, this should be a priority, as should domestic tourism.

Please see the detailed discussion and recommendations on this topic in our submission to the 2020 Inquiry into Australia’s cultural industries.

Theme 4: Legal Protections

14. Is the current framework protecting Indigenous cultural expressions good enough?

The short answer is no.

Without repeating it here, we refer to relevant parts of our submission to the 2017 House of Representatives Standing Committee on Indigenous Affairs into “*The growing presence of inauthentic Aboriginal and Torres Strait Islander style art and craft products and merchandise*”.

The AAAA also contributed to the Senate Committee Inquiry into the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill, 2019. Please refer to that submission.

In relation to inauthentic art in the tourism market, there is a lot that can be and should be fixed under current Law which the ACCC could be enforcing. This is discussed as part of our answer to question 5, above.

Sadly, many of the worst examples of inappropriate practices regarding copyright involve Federal and State Government departments. One of the Association’s Board members that specialises in this area has repeatedly pointed out that, in the vast majority of cases, contracts presented to Aboriginal people by government departments contain clauses where the creator is required to sign over copyright.

The Board member provided the following example:

The ACT ombudsman conducted an ‘art competition’ in early 2018, “calling all Aboriginal and Torres Strait Islander” artists, inviting them to create a piece of art that represents ‘Our Community’.

The winning artist was to receive a prize of \$1,000.

The terms and conditions included:

By entering this competition, you assign all intellectual property rights (including but not limited to full copyright and moral rights) to the OCO for the period until the competition is decided. If your entry is not declared the winning entry, the OCO automatically assigns all intellectual property rights back to you. However, if your entry wins then all intellectual property rights will remain with the OCO.

You agree that your design may be:

- used by the OCO for promotion, advertising, resource and marketing purposes*
- published in whole or in part and*
- Used or published by the OCO without acknowledging you as the artist although the OCO will endeavour to do so where practicable.*

An AAAA Board member was asked by an artist whether the permanent assignment of all IP for the winning entry was fair.

The member intervened with the Ombudsman's Office to point out the unfairness.

That attempt to intervene was ignored.

The matter needs to be addressed. The alternative is that those formulating policy leave themselves (rightly) wide open to accusations of rank hypocrisy when later announcing measures to protect Indigenous IP. The AAAA recommends that an audit of Commonwealth and State government practice be undertaken.

15. Should there be a mandatory Indigenous Art Code? If so, how do you think that should work?

Before proceeding, please note that the AAAA adopted almost the exact wording of the Indigenous Art Code when updating our Constitution and Code of Ethics in 2014 and our members are required to observe that Code of Ethics. So, by definition, we support a mandatory Indigenous art code. We have one. It is mandatory for our members.

The Association's issue is not the Code itself, it is the manner in which Indigenous Art Code Ltd (IAC Ltd) has and is administering the Code. The AAAA does not and cannot support a mandatory code governed by the existing structure.

A mandatory code, if it was to be supported and thus workable, would have to, amongst other things, be governed by a truly representative and informed Board containing the full spread of required IVA industry knowledge and it would have to conduct itself in a way that did not undermine both consumer and industry participant confidence and trust in IVA.

The AAAA has repeatedly tried to work with the IAC to address AAAA member concerns and to work towards a better solution. We have been unable to gain any traction.

The AAAA's recommendation is that a mandatory code be introduced, governed by a new entity or the same entity but with a vastly different Board and voting structure.

We are happy to discuss in detail with OFTA and the Minister our detailed recommendations, the reasoning behind those recommendations and how and why we arrived at our position on the matter.

16. Do you like the idea of a certification trade mark scheme for authentic products? How do you think it should work?

As set out in previous submissions, the AAAA contends that the problem lies in the souvenir area, not in Indigenous fine art.

In our opinion, a certification system risks undermining confidence in fine art by causing the consumer to think to themselves that Indigenous fine art must be really problematic if it is necessary to certify it.

One member commented as follows: "... a trademark system has no value in the original art market where connoisseurship, curatorship/study and appreciation of the hand of the artist is paramount."

Another argument against applying it to fine art is that, anecdotally at least, there is a far greater problem in non-Indigenous fine art. If there is a need for such a system, start there.

As regards souvenirs, we have already commented in detail in this submission, in the submission to the 2017 Inquiry, in evidence to that Inquiry, in the submission related to Senator Hanson-Young's 2019 Bill concerning the matter, and in evidence to the Senators considering the 2019 Bill. Some important points include:

- it is hugely complex and complicated;
- there isn't agreement among ATSI people as to what authentic means;
- there isn't even agreement among ATSI people about the use of different iconography and painting techniques, such as dots and cross hatching;
- Aboriginal AAAA members have questioned: Given the absence of agreement, who is going to police this and how can they satisfactorily police it?
- Aboriginal AAAA members commented that there is the real risk that it becomes yet another mechanism to entrench the existing exclusive club of who gets a say in IVA. Does it become a tool for even further disenfranchisement of IIVA?
- How do you deal with authenticity for that group of Aboriginals that cannot identify their original language group? Or, do they get "cancelled"?
- the ACCC has shown us via the Birubi Arts case that the worst of the abuse can be stamped out using existing legislation. Instead of diving into complex and highly esoteric discussions on this matter, why is this not being applied and the worst of the abuse being stamped out? and
- the highly nuanced and esoteric matters are best referred to NIACA, provided NIACA manifests itself as a representative body and not an echo chamber representing the same narrow interest groups we see elsewhere in IVA.

17. Do you like the way the Resale Royalty Scheme works?

As pointed out elsewhere, aside from Supporter Members who are not represented on the Board, the AAAA's membership comes from two different groups of industry participants, gallerists/art centres/dealers (dealers) and artists. In general, but particularly when considering matters such as the Resale Royalty Scheme (RRS) where there are competing interests within our membership, the Board is obliged to, and must be careful to, act in the best interests of members as a whole. That requires quite some balancing of objectives and opinions. Arriving at an Association position on the RRS has been one of the Board's most challenging tasks.

There are different opinions amongst Association members, but as a whole, the Association is supportive of the principle of a resale royalty (RR).

Having said that, the Association, including our artist members, believe that the RRS requires modification to better and more equitably operate and to better serve the industry.

We note that, based on the last information we have from the administrators of the scheme, Copyright Agency Limited (CAL), AAAA dealer members had contributed over 50% of the total royalties collected in respect of IVA. Much of that money goes back to the artist members of the Association. Accordingly, as a group, the Association members are in an excellent place to understand what can and should be changed and to assist in identifying how that can happen in an equitable way. Put another way, member artists and dealers are living the scheme, as opposed to those inside the industry and industry commentators who pass opinion without any practical basis for their judgements.

In 2019, after group consultation with our Artist Board Members and our Aboriginal Patron, the Board resolved the following:

- The AAAA's position should remain that we support the RRS.
- The existing scheme needs amendment to address weaknesses in its original design and learnings from its (then) 9 years of operation.
- Any suggested amendments needed to be structured to ensure artists' overall financial position do not go backwards. That is, any changes that would result in loss of income to artists had to be offset by changes that broadened the collections base and increased revenue. It has to be a nil sum game.

The Association bases its opinions and its recommendations for changes on:

- Glaring flaws we saw in the RRS that were obvious from the outset;
- Over 10 years' experience of living the RRS, for both artists and dealers;
- Extensive discussions with CAL; and
- Research into the characteristics of longstanding and successful overseas schemes, particularly in the EU.

Recommendations and reasoning:

- a) Retain the existing flat rate percentage levy of 5% with no dollar cap

Reasoning

- EU schemes typically levy at 4% and employ a sliding scale under which the maximum royalty is EUR12,500.
- The Australian scheme levies at a higher rate and there is no cap, meaning our scheme delivers substantially more for artists.
- AAAA artist members recognise that these characteristics of the Australian scheme benefit them hugely while dealers question why they are penalised versus overseas schemes.
- Despite the above, the Association recognises that decreasing the percentage or employing a sliding scale could not be implemented while achieving the goal of not reducing overall artist remuneration.

b) Continue to levy whether or not there is a profit on the resale

Reasoning

- Literature suggests that this scheme feature has caused consternation and been challenged in Europe as well as here in Australia, the reasoning generally being that:
 - How can it be fair to further remunerate an artist when the seller has lost money?
 - Measures such as this depress the art market.
- No EU scheme has been changed to address this, the general justification being:
 - that it is simply too hard to do.
 - no evidence exists that the art market has been depressed following the introduction of a royalty scheme.
- the AAAA sees no mechanism to change the existing legislation whilst maintaining artist income.

c) Change the scheme so that the royalty is levied on the GST exclusive amount.

Reasoning

- No other scheme levies on the tax inclusive amount.
- It is patently inequitable to levy a royalty on a tax.
- The AAAA believes that the revenue loss from this can be more than offset by other measures recommended.

d) Introduce the right for CAL to inspect Art Market Professionals' (AMP) books to determine whether the AMP is complying with the Act.

Reasoning

- Like taxation, the likelihood of getting some AMP to comply without the spectre of an audit is low.
- There has been significant lost income to date for artists due to non-compliance and, without change, there will be ongoing loss.
- It would level the playing field for dealers who currently comply – at present, they are at a competitive disadvantage against non-complying dealers who can and do use the funds saved to further promote their businesses.
- The AAAA recommends that this provision not be applied retrospectively.

e) Remove the requirement to report sales that do not attract royalty

- Given the level of detail in the information that is actually gathered by CAL, the current requirement is of no practical value and merely puts an unnecessary administrative burden on AMPs.
- It provides no benefit to artists as CAL, for privacy reasons, will not provide artists with information on who remits. Accordingly, the artist cannot reconcile their records.

f) Increase the threshold from \$1,000 to \$2,000

Reasoning:

- Coupled with the 5% flat rate, the absence of a cap and the fact that the majority of royalties that are being levied in Australia are on the first sale to the consumer, the current threshold represents an unfair penalty on AMPs and is inequitable.
- The AAAA estimates that raising the threshold would result in a reduction of scheme revenue of 10%. The AAAA has assessed that the extra revenue generated by expanding the collection base following the grant of inspection rights to CAL and levying RR on the buyer's premium at auction sales would be more than enough to fund this and other measures.
- Whilst the revenue reduction is estimated at 10%, the number of artworks captured by the scheme would drop by approximately 35% (AAAA member data). This represents a significant simplification of reporting requirements for AMPs, particularly if implemented together with the other recommendation of removing the obligation to report sales that do not attract royalties.
- Some Association members advise that they deliberately restrict their sales to artworks under \$1,000 to avoid the administrative burden of reporting and the cost impost on what are, for fine art, relatively low value, low dollar margin items. This is not healthy for artists or AMPs. The same members advise that a threshold of \$2,000 would see them stock and promote higher value items.
- Thresholds in the EU are, on average, significantly more than in Australia. Only Germany's is less:
 - Austria – EU3,000
 - France – EU750
 - Germany – EU400
 - Italy – EU3,000
 - Ireland - EU3,000
 - UK – EU1,000
- The scheme has been in place for over 10 years and there has been no threshold adjustment in that time. This represents classic bracket creep.
- The AAAA notes that the threshold can be amended without alteration to the Act itself. The AAAA recommends that this capability not be invoked without also addressing the scheme's other weaknesses.

g) Exempt intra dealer trading stock from being levied

Reasoning

- In Aboriginal art, a significant portion of transactions involve a dealer purchasing an artwork outright and then marketing to the consumer (first consumer sale stock) or wholesaling to other dealers who do not have access to the artist concerned (intra dealer trading stock).
- This way of trading is first and foremost supported by many artists who value the immediate receipt of money and the opportunity for their art to be widely promoted.

- However, the current legislation results in the royalty being levied on both the first consumer sale stock and on the intra-dealer trading stock sale.
- No other scheme in the world that the AAAA is aware of takes this approach. It is a flaw in the Australian scheme's design and unfairly penalises galleries and, in certain circumstances, works against artists' interests.
- This approach does however result in a significant increase in the flow of funds to artists, something supported by AAAA artist members in particular, with one important caveat (see below). Furthermore, and based on the numbers available to the AAAA, first consumer sale stock also represents the greatest proportion of royalties collected in Aboriginal art. From a dollar perspective it has become an important part of some artist's cashflow. On the other hand, these scheme provisions work to the detriment of many artists in that dealers will no longer purchase up front, meaning the artist must consign their art and await a consumer sale before they receive any cashflow.
- Despite the sometimes-adverse effect on cashflow timing, there is no prospect of amending the legislation to remove the triggering of the royalty on the first consumer sale stock and at the same time, via other amendments to the Act, balancing out that revenue loss to artists. Thus, the AAAA recommends that the royalty continued to be triggered on first consumer sale stock.
- The triggering of the royalty on intra dealer trading stock is not supported by artists or dealers within the AAAA.

Dealers' aversion to it is self-explanatory. It is simply yet another cost impost.

What has not been appreciated is that in Aboriginal artists' eyes, it works against them and the furthering of their careers, and they are against it. The reason goes back to the way Aboriginal art gets to market: in many cases, IIVA in particular use dealers as an intermediary to distribute their works to a network of galleries and part of that construct sees the artist paid up front. There are two things critical and beneficial to the artist here: having the chance to expand the "reach" of their art without them having to spend time on marketing and administration; and receiving money up front. The RR makes this business much less attractive for dealers and therefore for artists because the royalty is levied on this intra-dealer trading stock.

- The EU schemes avoid this issue by exempting royalties on intra-dealer trading stock for items purchased by the dealer for less than EUR10,000 and held for less than three years.
- The AAAA contends that the revenue from intra-dealer trading stock is relatively small, contributed to by the fact that is often ignored, and that the excision of this feature would remove a barrier to market whilst easily being funded by the expanded collection base. As already stated, as a whole,

AAAA member artists (particularly those directly affected by it) do not support the current construct of the legislation and nor do dealer members.

- h) Provide a workable mechanism for artists to decline to receive royalties in return for a better upfront payment.

Reasoning

- If an artist wishes to decline to receive royalties, the current system requires contact by email from CAL to the artist and response via CAL's online system.
- This is completely unrealistic for bush artists in particular, many of whom are illiterate or somewhat literate but with no computer or no relevant computer skills.
- AAAA artist members advise that they want a system in place that better facilitates their declining to receive royalties, thus allowing them the flexibility to negotiate a better upfront payment.
- The AAAA notes that this measure would have to be carefully worked through with CAL and with artists affected to ensure it was workable, effective and not open to abuse or gaming. In that regard, the AAAA notes that the proposed inspection rights would represent an ideal "insurance policy" to mitigate against any abuse.

- i) Allow AMPs to offset advances to artists against royalties payable

Reasoning

- Currently AMPs are expressly forbidden to offset royalties payable against advances made to artists. This is consistent with the approach recommended in the EU guidelines.
- However, the legislation can currently puts the dealer in the position where they:
 - advance funds to an artist against further artworks;
 - the artist fails to deliver the artworks, leaving the dealer with a worthless receivable in their books;
 - yet the dealer still has to pay royalties on sales of the defaulting artist's works.
- In this instance, the AAAA contends that the current provision is not in the interests of artists or dealers.
- The merits for the dealer of changing the legislation to allow a dealer to offset advances against RR is obvious. The AAAA contends that it is also fair and equitable and points out that:
 - the offsetting of advances against later income is commonplace in areas of the arts such as publishing and music. What is different about visual arts?
 - In IVA, art centres and private dealers commonly and regularly advance artists monies where an artist consigns works. The advances are then netted from subsequent sales of the consigned works. RR also arises upon the sale of an artwork. Why is a different principle applied?

- Importantly, AAAA artist members, particularly those that wholesale their art, do not support this provision of the current legislation either.

The simple reason is that it lessens the chance that a dealer will advance funds to this artist group as the dealer currently does not have the security of knowing the advance is recoverable from royalties generated from existing artworks in their inventory.

Artists in this position have also complained to the Association that the legislation currently places them at another disadvantage versus those working under the art centre system or those IIVA that have the financial wherewithal to consign their art.

j) Apply levy to auction proceeds including buyer's premium
Reasoning

- BP is often spoken of as the auction house's margin, whereas seller's premium is designed to cover the out-of-pocket expenses associated with an auction.
- The current legislation excludes buyer's premium (BP) from the amount RR is payable on. The AAAA notes that the exclusion of BP from royalty calculations is consistent with the EU's recommended approach.
- However, the AAAA contends that BP is an integral part of a buyer's decision on the amount the buyer is willing to bid at auction and thus clearly forms part of price.
- This being the case, AAAA artist members do not understand why they are being denied royalties on this part of the sale price.
- AAAA gallerist members as a whole fail to see why, if they resell an artwork on behalf of a client and RR is applicable, it is applied to the entirety of the sale price, yet different rules are applied to auction houses.
- Making this change will level the playing field for dealers and generate revenue that can be used to fund other important structural changes for artists and dealers alike.

18. Is there more that could be done to increase awareness of moral, cultural and intellectual property rights?

More can and should be done to increase awareness of moral, cultural and especially Intellectual Property (IP) rights.

The AAAA covered some of this ground in our Submission to NIACA.

A short-term priority for NIACA is, we said, for them to develop, promote and bring into law a national solution to the one common problem faced by every individual and interest group across the arts - that is, preserving Intellectual property.

In its November 2020 submission, the AAAA said that a basic step in securing sustainable IVA growth is through increasing awareness of IVA. We now build on that: Just as you grow the IVA market by growing awareness of it, so you can grow the awareness of the existence and importance of moral, cultural and IP rights. In fact, they seem to go hand in glove.

As pointed out in our comments on question 14, Federal, State, Territory and Local Governments have the opportunity and responsibility to lead the way on this. As one Aboriginal member put it:

“There needs to be some sort of 'Code of Ethics' as signed up for and adhered to by Government, by corporations and industry supporting the signatories of best practice; such as a Charter of Blak Arts.”

Bottom up feedback on IP from our ATSI members included the following:

- Action needs to be underpinned by legislation at Federal and State levels; policy means action.
- What do breaches or non-compliance look like? What about non-subscription? The space is characterised by a lack of policy with tangible outcomes and infringements. Who polices complaints?
- Cannot be based on the 'United Nations - Charter of Right of Indigenous Peoples' as this is only a guideline and any inherent rights are not recognised within Australian law.
- Are there other successful models where Indigenous cultural rights have been successfully legislated that we can learn from rather than thinking we have to reinvent the wheel? New Zealand? North America?
- Repetitive nature of these reports and policy exercises – we are tired of communicating the same stuff and never seeing any action.
- The wrong people are advising on this. If the same suspects are involved, how can there be different outcomes?
- Agencies and departments overwhelm us with old fashioned thinking, staff and disjointed realities from what's happening with the sector and our position as Peoples for alignments around Treaties and other policies, etc.
- Boards are made up of people who don't know enough about (the IVA) industry.
- Government is too lazy, too slow or not engaged enough to enact policy changes and amendments, so why bother contributing? I'm better off just getting on with my business.
- I have great concern about the wording used in the Consultation Paper and I'm not willing to contribute ideas and then have them used to compete with me in the space my business operates (IP and advisory).

19. How do you think that Indigenous Cultural Intellectual Property protections could work in practical terms?

The AAAA believes that this is a moot point and will remain so until agreement is found on what is wanted and what is achievable.

The Association thanks OFTA for the opportunity to contribute to this process.

A lot of work has gone into thinking about and designing this Paper. A lot of work gone into thinking about and responding to the Paper.

As ever, we remain available to discuss, clarify and build on the matters raised herein.

Geoff Henderson

President

Attachments:

1. AAAA submission in respect of the October 2020 House of Representatives Standing Committee on Communication and the Arts Inquiry into “*Australia’s creative and cultural industries and institutions*”.
2. AAAA submission in respect of the Senate Committee Inquiry into the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill, 2019.
3. AAAA’s Feb. 2019 submission in respect of the proposed National Indigenous Arts and Cultural Authority (NIACA).
4. AAAA’s December 2018 submission to the Museums Galleries Australia – *Indigenous Roadmap Project*.
5. AAAA initial submission to the 2017 House of Representatives Standing Committee on Indigenous Affairs into “*The growing presence of inauthentic Aboriginal and Torres Strait Islander style art and craft products and merchandise*”.
6. AAAA follow up submission to the 2017 House of Representatives Standing Committee on Indigenous Affairs into “*The growing presence of inauthentic Aboriginal and Torres Strait Islander style art and craft products and merchandise*”.

Other Relevant Information:

1. Hansard in respect of evidence given in December 2019 to the Senate Committee Inquiry into the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill, 2019

10 September 2021

The Employment Branch

National Indigenous Australians Agency

By email: ISEP@niaa.gov.au

Response to NIAA Discussion Paper on Indigenous Skills, Engagement and Employment Program (ISEP)

Introduction

The Aboriginal Art Association of Australia Ltd (“AAAA”) serves and represents artists, individuals and organisations that produce, promote, protect and support Indigenous Art, and the cultures that create and nurture that art. Our membership includes over 200 Indigenous artist members (independent and art centre affiliated), over 50 trade members drawn from commercial galleries, dealers, art centres, licensors and mixed retail outlets marketing fine art and souvenirs and over 400 supporter members. Our Board of 9 is comprised of Indigenous members and non-Indigenous members. The Association has an Aboriginal Cultural Council on which it relies for advice on matters of Indigenous culture.

Together with the promotion of ethical practice, for all of its 22 years, the AAAA has grappled with growing the Indigenous visual art industry’s economic, social and employment benefits and opportunities.

Although Indigenous Visual Arts (IVA) is not directly connected to the Government’s mainstream employment services, nor to the Indigenous-specific employment programs funded through the Indigenous Advancement Strategy (“IAS”), the AAAA anticipates that it will be able to contribute to your thinking about IAS involvement in Indigenous-specific employment programs. To adopt the language of your Discussion Paper, the AAAA thinks it can help NIAA “increase economic opportunity for Indigenous Australians and drive actions that connect Australians to jobs, target skills acquisition and career advancement opportunity”.

We are interested in the whole scope, but our particular experience is in identifying barriers to employment, opportunities, skills acquisition and career advancement in IVA - in cities, regions, and remote communities.

Good Evaluation – Good Policy

The Association is encouraged to see that your decision-making is based partly on the interim evaluation findings listed at p. 7 of your Discussion Paper. To help you ‘test’ your interim evaluation findings, we offer the following responses:

1. *A flexible approach: local approaches are required for effective delivery of Indigenous programs that can adapt to region-specific needs.*

This finding is highly consistent with our experience with the IVA sector across Australia.

2. *High quality mentoring and wrap around services: mentoring is crucial to overcoming participant’s barriers to employment in a supportive manner.*

Agreed. We include ideas on how to overcome barriers to employment and opportunity, including the use of using wrap around services.

3. *Devolution of decision-making and governance structures: the delivery of services in partnership with the local Indigenous community.*

Agreed. We offer ideas for how to do so.

4. *Upfront investment in job readiness: the importance of connections with local services, as well as the need to be responsive to requirements at various stages of the participant’s journey and local labor conditions.*

Agreed, especially the need to be able to respond to the needs of individual participants and their individual circumstances.

5. *Culturally appropriate work places.* Agreed.

Our comments are set out below and address 3 aspects of your Discussion Paper:

1. They encompass and expand on your interim evaluation findings;
2. They address your Discussion Questions at p. 9; and
3. They address the four “Priority Reforms” in the *National Agreement on Closing the Gap* as described at p. 6 of the Discussion Paper.

Basic principle of Inclusiveness and Equity in Policy Design

The AAAA exists to help all stakeholders work together to build a sustainable IVA. The IVA includes Indigenous Artists across the whole country – cities, regional towns and in remote areas.

With this in mind, before we drill down into specific observations and recommendations, experience tells us that a key principle must be put on the table and, in our opinion, respected and observed as the ISEP is designed and navigates its way forward.

Wherever located and whether inside the government funded art centre system, or independently trying to earn a living outside that system, *all* Indigenous artists need to be

properly included in the policy design and relevant decision making and be properly supported. Employment and skill building opportunities are equally relevant and important for everyone.

AAAA Comments and Thoughts

The AAAA has spent a lot of time over its 22 years dealing with and thinking about barriers to improved Aboriginal skill development and employment opportunity in urban, regional and remote locations. We share the following ideas:

1. Leveraging Rather than Duplicating

Your Discussion Paper acknowledges the good sense of future IAS investment leveraging rather than duplicating mainstream employment services to make a sustainable contribution to closing the gap in employment outcomes.

An example we would like to explore further with you is leveraging IAS investment with existing Commonwealth Indigenous Visual Arts Industry Support (IVAIS) funding administered through the Office for the Arts. This IVAIS funding of art centres is an outstanding Aboriginal employment and social success story. One to be applauded and celebrated. Even so, there is plenty of scope for improved Aboriginal employment opportunities and associated outcomes.

Art centres rightly attract 10's of millions of dollars of funding annually, but 50 or so years down that track, art centres are overwhelmingly managed by non-indigenous people.

There are plenty of Indigenous people working in art centres, but generally not at senior levels.

Art centres are governed by Indigenous Boards, but art centre agendas and programs are typically set by non-Indigenous coordinators with Indigenous owners often left feeling powerless.

It is a shame that, after 50 years, there is no structure or policy to address this deficiency.

ISEP may be the opportunity to create that policy and structure.

AAAA believes that addressing this improved skill and employment-building opportunity would be a chance to:

1. Leverage off a successful Government employment program (IVAIS)
2. "...co-design a locally informed approach to supporting Indigenous engagement and employment, designed to respond to the distinct needs, strengths and interests of local Indigenous communities", - see Discussion Paper (p. 4)
3. Advance the "Priority Reforms" on "*Partnership and shared decision making*", and "*Building the Aboriginal community-controlled service sector in agreed outcome areas*".

Changes and improvements start with the desire and willingness to make them; they need a clear road map (how are we going to make them?); and can only happen successfully if based

on the correct decision-making process, especially the need to have ‘conversation’ as a pre-condition to proper ‘consultation’.

An important aside is that good policy design for this particular opportunity will recognize, appropriately consult on, and address the challenge of how the fairly standard human behavior of looking after family and kin can result in ‘outsiders’ being denied access and opportunity and also of avoiding Indigenous people being placed in impossible positions in their own communities due to the expectation to “help” family.

2. Use human capital well

A pathway to improved employment opportunity is to ensure existing skills are being used as effectively and as efficiently as possible. People should be concentrating on what they are skilled at and trained for.

Currently, the skills required in art centres are so broad that only the largest can hope to have enough staff to cover the requisite disciplines required to run a successful business. This is a known and longstanding problem for any art centre, and will remain so, whether headed by an Indigenous or non-Indigenous co-ordinator.

The simple step of centralising routine business matters such as marketing, finance and administration into area hubs set up for that purpose would immediately free up the art centre co-ordinator to focus on creative matters. Taking this approach would dramatically simplify the skill set required for a co-ordinator, lowering the barrier for Indigenous (and non-Indigenous) participation and dramatically reducing the challenge of getting Indigenous co-ordinators job ready.

The AAAA contends that an important added benefit would be improved quality of artistic output which, when more efficiently and effectively marketed through hubs by specialists in that area, would lead to increased revenue and associated social benefits for artists and their communities.

3. Incubator program – job readiness and addressing churn

IAS investment that was serious about leveraging existing employment related funding would address the matter of the high level of art centre worker turnover or churn.

One way to do that would be to invest in an incubator scheme where prospective art centre workers spend a period in established art centres to “learn the ropes”. This would make them more job ready and lessen the chance that they struggle or fail when confronted with the complexities of running an art centre. At the same time employment, revenue, economic development, and thus social and cultural benefits in local remote communities would be *productively* expanded. Such training would extend work skills beyond the art centre. The training would underpin more autonomy and empowerment, helping people to make decisions in future business dealings and practices.

The incubator scheme should start with Indigenous people who are interested in developing the skills needed to govern and manage a successful art centre, not just prime the linen for the artists, or attend to menial tasks as is currently too often the case.

The problems with employment, skills development and staff retention in art centres are not new. In his 2003 Report to the NT Government, '*An Indigenous Arts Strategy for the Northern Territory: Recommended Framework*' – Professor Altman says;

Many art centres have a track record of low staff retention sometimes caused by staff burnout, with attendant organisational loss of corporate memory. This in turn can have a direct impact on the long-term stability and performance of centres, which are needed to develop economic and social benefits.

A re-evaluation of most staffing in most art centres is necessary, ensuring that each has at least one full-time person to work directly with the artists as an art coordinator, and a second person to run the business as a manager. It still seems to be assumed by funding bodies that one person can run the business, promote and market the product made there, work with the artists on production matters all day, attend interstate gallery openings, write grant submissions and acquittals, and deal on a person by person basis with 15-150 artists.

ISEP may be the chance to address this longstanding opportunity to expand Aboriginal employment while responding to the distinct needs strengths and interests of local Indigenous communities – as set out in ISEP's "case for change" at p. 4 of the Discussion Paper. The incubator scheme looks like an ideal opportunity for the "high quality mentoring and wrap around services" identified in your interim evaluation finding number 2. This sort of mentoring embedded in the incubation idea would amount to skills transfer via job shadowing, and, in the words of your evaluation finding, *demonstrates* how to overcome participant's barriers to employment in a supportive manner.

4. Identify and share best practice

An outstanding opportunity is for IAS investment to create and deploy a suitably qualified team to travel from art centre to art centre gathering and communicating best practice.

That approach could also be used to improve skill development and employment opportunities and outcomes for independent artists working in cities, towns or remotely.

5. Road Maps and Milestones

The Association is not aware of any system of "road maps" that grant recipients can, and are expected to, follow as regards the development of their businesses.

IAS Investment could lead to a system of clear road maps and milestones that lead to better employment, skill creation, economic and social outcomes for recipients of funding.

Development and monitoring of such road maps would be part of the remit of the best practice team.

Existing bodies funded to support art centres could also be tasked to get more involved in this sort of target setting. One idea may be to write such tasks into funding agreements as required deliverables, thus delivering improved impact measurement and an improved basis for evaluation.

6. Using better training to grow Indigenous employment

The AAAA recognises the effort the Government is making to understand what training should be provided to grow Indigenous employment.

In the IVA sector, our view is that training should address what matters most in the wider IVA ecosystem and be aimed particularly at creating a growing, prospering, sustainable IVA industry, based on a well-informed Australian population, confident about and proud to share its Aboriginal heritage and cultures.

That training would cover:

- The basics of financial sustainability, including basic financial literacy skills development,
- Basic business doctrine and discipline,
- An understanding of why government funding should promote sustainability by focusing on consumption, not production,
- An understanding of marketing principles and practice,
- An understanding of how to use information and communications technologies,
- What it means to be a customer-centred service, and how to do it,
- Digital transformation,
- Entrepreneurship,
- Creating cultural safety frameworks within employers' systems and operations,
- Community development and employment opportunities based on cultural activities, including agricultural and aquacultural knowledge and practice,
- Self-determination and economic participation through the arts and art practice,
- Creating career pathways, not just low-lying jobs'
- Business structures and setting up an ABN
- Negotiation skills, including a general understanding of contracts.

Independent Indigenous artists and urban Indigenous artists must also be able to readily access such support and training.

7. Independent Indigenous Visual Artists ("IIVA")

The IVAIS scheme essentially deals with art centre/art centre style funding and support. It is a dedicated fund, or, to all intents and purposes, run as one.

On the other hand, IIVA are forced to compete for funding with non-Indigenous visual artists for Australia Council funding. There is no discrete funding pot for IIVA. Why? Why are IIVA treated differently?

The Federal Government's Covid-19 response demonstrated the stark difference in treatment:

- Art centres were allocated \$7 million in much needed funding, something the AAAA lobbied for. That funding was automatically allocated. No application was required.
- IIVA were required to compete via a competitive application process with other non-Indigenous visual artists for an Australia Council funding pot which totalled \$4.5 million.

It cannot be said that IIVA are any less worthy of support than artists working through art centres or that support of IIVA will not lead to better financial, community employment outcomes. IIVA need support and deserve express consideration as part of your consideration of Indigenous-specific employment and skill building and training programs. This cohort of Indigenous Australians fall squarely within *each* of the four Priority Reform areas identified in the Closing the Gap Agreement.

The AAAA notes that one of the tests required to be applied to funding administration is whether it is ethical. The AAAA maintains that discriminating between these two groups of artists in this manner is unethical and biased and should be righted.

8. Understand the job creation significance of the commercial sector

As the Government recognised in its Consultation paper on *Growing the Indigenous visual Arts Industry* in September 2020, “...the industry is made up of a strong framework of art centres, commercial galleries, auction houses, wholesalers, dealers and independent artists working in a range of ways, including being represented by agents or commercial galleries, contracted as designers, or operating as sole traders”.

The role of, and the importance of the gallery and other commercial functions is fundamental to employment, and to employment growth.

That commercial sector is the enabler of all other parts.

Broadening thinking and treating galleries as a possible avenue for increased Indigenous participation is a far healthier and more productive approach than the current mindset which seems hell bent on dismantling or bypassing the existing gallery sector and establishing parallel avenues to market. This is even more so in the world we ever increasingly move to, one of finite and scarce funding. The AAAA recommends leveraging off what is already in place rather than spending millions of replicating a model that has served artists worldwide for centuries.

9. Existing initiatives - how we view success

ISEP designers will be grappling with the cultural complexities of Indigenous employment issues, and will not be surprised that the concept of “employment” in the Indigenous visual art context has several dimensions.

One such complexity is the role of art centres in building skills and opportunity. If an art centre artist chooses to become a sole trader, and does so successfully, should industry participants and government see that as a success for the art centre system, or a failure?

AAAA’s view is that a successful Indigenous artist running their own business, whether inside or outside the art centre system, is a successful employment outcome, and a successful policy outcome whether under the existing IVAIS policy and program or via the broader artist support that we propose.

We believe that most people would agree that it won’t be a failure if good policy and astute and targeted funding leads to increased Indigenous participation in art centre management. Why then do many regard an artist developing their skills and being made “job ready” to take their practice independent as being problematic, a failure and a betrayal? If one pauses and

examines such thinking in the same manner we judge self-determination in other areas, it can only be concluded that this commonly held mindset is deeply offensive.

Controls over peoples' livelihoods and decision making should be released, not enlarged. Instead of the perceived loss, the reality is what is gained; that is a successful story of developing pathways and employment with autonomy on participation, economic freedom, decision making and self-determination. That is, choice.

Good policy will enable Indigenous IVA participants, whether artist, co-ordinator, gallery employee or gallery owner, to determine their future the way they want, not the way well-meaning people who seek to control outcomes to suit their IVA ideology want. Good policy will enable self-determination, not perpetuate the current flawed and patronising mindset.

AAAA says that every Australian should be able to make such choices for themselves and their family and community. Indigenous self-determination surely has to include that capacity.

10. A New Lens - Employment in the IVA industry – cost or opportunity?

IVA is rightly a focal point for employment and social development, though currently and incorrectly overwhelmingly art centre only focussed. IVA is also far more than this. It is a national treasure. Something utterly unique to this country. Something of enduring cultural worth to be shared and celebrated. Aside from the Opera House and Harbour Bridge, what else that is manmade in this country truly has the capacity to move the dial for residents and visitors to Australia? Within the arts, is there a single other sector that is on visitors to this country's radar more than IVA? Yet, IVA support is still viewed through the lens of cost, possibly because we have continued to view it the same way as the arts in general.

IVA is one of the most successful and proven mechanisms for exiting welfare funding and disadvantage that this country has seen. Our challenge, and enormous opportunity, is to support that further, broadening our thinking, leveraging off the good job that has been done and learning from previous initiatives and mistakes. Part of the challenge is to stop viewing it as a cost and see it as a long-term investment that will not only increase income in the arts but that also has the potential to benefit all Australians, particularly Indigenous Australians, through the flow on benefits of promoting something so unique.

The IVA sector is arguably already one of the largest direct and indirect employers of Indigenous peoples. But there is enormous opportunity to increase that employment through exploiting IVA's "natural advantage", intelligently supporting it with astutely funded, imaginative and well targeted employment policy and programs.

We hope the ISEP can tap into that potential.

To put the above in perspective, the AAAA understands that tens of billions are spent on fighting Indigenous disadvantage each year and several billions on Indigenous business-related initiatives. How much of that is in IVA? A minuscule proportion. Viewed against the massive spend on passive welfare, one must ask why and challenge ourselves to invest in something with the power to create new outcomes, not just support the unfortunate trapped in existing ones.

Concluding comments

AAAA would welcome the chance to sit down to take you deeper into the opportunities to grow employment opportunities and skills in the Indigenous visual arts sector.

With that in mind we enclose our submission to the Government's recent and ongoing *Action Plan Consultation Paper on Growing the Indigenous Visual Arts Industry*, and our submission to the recent and ongoing House of Representatives Standing Committee on Communication and the Arts *Inquiry and report into Australia's creative and cultural industries and institutions – The Indigenous Visual Arts Industry*

Yours sincerely

Geoff Henderson

President

Matthew Everitt

Director & Aboriginal Cultural Council Member

13 December, 2021

National Indigenous Australians Agency
New Remote Engagement Program

By email: NREP@niaa.gov.au

Response To NIAA Discussion Paper New Remote Engagement Program

1. Introduction

The Aboriginal Art Association of Australia Ltd (“AAAA”) serves and represents artists, individuals and organisations that produce, promote, protect, and support Indigenous Art, and the cultures that create and nurture that art.

Membership includes over 250 Indigenous artist members (independent and art centre affiliated), over 50 trade and associate members drawn from commercial galleries, dealers, art centres, licensors and mixed retail outlets marketing fine art and souvenirs and nearly 500 supporter members. Our Board of 10 is comprised of five Indigenous members and five non-Indigenous members. The Association has an Aboriginal Cultural Council on which it relies for advice on matters of Indigenous culture. Artists from remote areas constitute approximately 50% of that category of member.

Together with the promotion of ethical practice, the AAAA has for 22 years grappled with growing the Indigenous visual art industry’s economic, social and employment benefits and opportunities, and with sharing those ideas with policy makers.

The AAAA anticipates being able to contribute to the NIAA’s thinking about Indigenous Advancement Strategy involvement in Indigenous-specific employment programs. Using the language of your July 2021 ISEP Discussion Paper, the AAAA thinks it can help you “increase economic opportunity for Indigenous Australians and drive actions that connect Australians to jobs, target skills acquisition and career advancement opportunity”.

Our primary experience is in creating agency for artists and other stakeholders in identifying (and talking to governments about) employment barriers, opportunities for

growth, skills acquisition, and career advancement in the Indigenous Visual Art sector - in cities, regions, and especially in remote communities.

2. AAAA's connection to the Remote Engagement Program ("REP")

The Government's mainstream employment services are undergoing transformational change. The Government correctly sees these changes as an exciting opportunity to co-design a locally informed approach to supporting Indigenous engagement and employment, designed to respond to the distinct needs, strengths, and interests of local Indigenous communities.

AAAA wants to share its experience to help NIAA understand and respond to those needs. Our experience and contacts with remote Indigenous artists and communities could help facilitate a "locally-informed" approach.

The 2021/22 Commonwealth Budget has at its heart, "...the creation of stronger economic pathways and economic opportunities for all Australians, including those living in remote Australia" (Discussion Paper p.3).

The "new program will be developed over the next two years in consultation with other levels of government, participants, potential service providers and indigenous communities in remote Australia". (p.3)

AAAA can help connect the design of the Remote Engagement Program to each of those employment and economic objectives.

AAAA can also help you achieve your "overall aim" of "[helping] a generation of Indigenous Australians living in remote Australia to have greater choices and economic opportunities".

We support our claims with the following detail.

NIAA wants a "broad conversation" and views on "how to design a new remote engagement program that is fit for purpose and is outcomes-focused."

Your Discussion Paper begins with a reference to the *New Closing the Gap Agreement*, and with the four priority reforms on which the New Closing the Gap Agreement is centered.

AAAA's connection to the NIAA, and to the REP, can be demonstrated by explaining how AAAA could help implement those four priority Closing the Gap reforms:

1. Partnership and shared decision-making between ATSI and governments.

AAAA exists to help governments partner with and share decision-making with Indigenous visual artists, including those practicing in remote Australia.

Improving and expanding such ‘partnership’ and ‘shared decision-making’ will help to expand an already important remote employment source and thus expand social and economic opportunities and outcomes.

Based on the innovative insights in your Discussion Paper, we have no doubt that what AAAA has learned about growing employment opportunity in the Indigenous Visual Art context will be able to be applied by NIAA more widely in remote Australia.

2. Building the Aboriginal and Torres Strait Islander community-controlled sector.

Australian governments should be pleased with the social and employment success of their remote art-centre system. It is an outstanding example of a community-controlled service sector. As good as it is, AAAA believes a lot more can be achieved.

As we see it, achieving those improvements starts with recognizing just how many Indigenous Australians are directly and indirectly employed by and through the Australian Indigenous Visual Art industry.

Second is to understand and leverage the strategies in the Government’s newly released *Action Plan to Grow the Indigenous Visual Arts Industry*. We consider this below.

3. Transforming mainstream government services to work better for ATSI people.

A significant transformational element could be to build a more sustainable and more inclusive IVA industry by 1) building better partnering and joined-up decision-making between Government, Government-funded, and private-sector entities who service and serve Indigenous Australians already in, or who could be potential entrants to, the IVA industry and 2) by leveraging already established logistical supply chains and distribution channels.

4. Building better data and sharing access to the right data to support Indigenous communities to make informed decisions with Government.

AAAA members work at this coalface. We are well placed to suggest and discuss ideas and would appreciate the chance to do so. We are especially interested in assisting your thinking on recording of data via decentralized databases.

This and several previous recent previous submissions offer many such ideas.

We have highlighted the connection between AAAA and NIAA because we want to persuade you that Australia's Indigenous Visual Art Industry is one that NIAA should understand and engage with.

3. Leverage Rather than Duplicate

Before addressing the REP Discussion Topics, we want to drill further into the important observation made in the ISEP Discussion Paper, at p.5:

"...future IAS investment needs to leverage rather than duplicate mainstream services and make a sustained contribution to closing the gap in employment outcomes."

We agree strongly with this idea and looked at it in our response to the ISEP Paper as follows:

An example we would like to explore further with you is leveraging IAS investment with existing Commonwealth Indigenous Visual Arts Industry Support (IVAIS) funding administered through the Office for the Arts. This IVAIS funding of art centres is an outstanding Aboriginal employment and social success story. One to be applauded and celebrated. Even so, there is plenty of scope for improved Aboriginal employment opportunities and associated outcomes.

Art centres rightly attract 10's of millions of dollars of funding annually, but 50 or so years down that track, art centres are overwhelmingly managed by non-indigenous people.

There are plenty of Indigenous people working in art centres, but generally not at senior levels.

Art centres are governed by Indigenous Boards, but art centre agendas and programs are typically set by non-Indigenous coordinators with Indigenous owners often left feeling powerless, especially the power to 'self-determine'.

It is a shame that, after 50 years, there is no structure or policy to address this deficiency.

ISEP [and the Remote Employment Program] may be the opportunity to create that policy and structure.

AAAA believes that addressing this improved skill and employment-building opportunity would be a chance to:

1. Leverage off a successful Government employment program (IVAIS)
2. "...co-design a locally informed approach to supporting Indigenous engagement and employment, designed to respond to the distinct needs, strengths and interests of local Indigenous communities", - see Discussion Paper (p. 4)
3. Advance the "Priority Reforms" on "Partnership and shared decision making", and "Building the Aboriginal community-controlled service sector in agreed outcome areas".

Changes and improvements start with the desire and willingness to make them; they need a clear road map (how are we going to make them?); and can only happen successfully if based on the correct decision-making process, especially the need to have 'conversation' as a pre-condition to proper 'consultation'.

An important aside is that good policy design for this particular opportunity will recognize, appropriately consult on, and address the challenge of how the fairly standard human behavior of looking after family and kin can result in 'outsiders' being denied access and opportunity, and of avoiding Indigenous people being placed in impossible positions in their own communities due to the expectation to "help" family.

Using leverage rather than duplication in the way we have described above could also result in significant Closing the Gap progress.

To explain how, we begin with Minister Wyatt's Foreword to the REP Discussion Paper, where he says that the Remote Engagement Program seeks to give effect to the National Agreement on Closing the Gap:

"The Australian Government [commitment] to supporting the social and economic aspirations of Indigenous communities by improving economic opportunities and employment pathways ... is embedded in the National Agreement on Closing the Gap, which establishes a target to close the gap on employment outcomes between Indigenous and non-Indigenous Australians."

AAAA says the opportunity is to make progress on Closing the Gap Outcome 16:

“Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing.”

The current “Target” for Outcome 16 talks *only* about ATSI *languages*.

Target 16: “By 2031, there is a sustained increase in number and strength of Aboriginal and Torres Strait Islander languages being spoken.”

“Cultures” are hard to define, and hard to target. But supporting ATSI visual art and craft is a way to strengthen and support ATSI cultures.

That connection is now accepted in Australia. See, for instance, how the relationship between ATSI cultures and ATSI art is described (at p.1) of the Productivity Commission’s October, 2021 Issues Paper – *“Aboriginal and Torres Strait Islander arts and crafts”*, as part of the Productivity Commission’s Study of the “value, nature and structure of the markets for Aboriginal and Torres Strait Islander visual arts and crafts”:

“Aboriginal and Torres Strait Islander visual arts and crafts are of global cultural significance and an important part of our shared identity. For Aboriginal and Torres Strait Islander people¹, art is a way to pass down stories and spiritual beliefs to future generations.

Through our art, the cultural connections of songlines and dreamings continue. Deep principles and concepts are taught through art to tell us the right way to relate to and live with each other. Knowledge is maintained and instructed through art. (Hurley 2021)

As well as maintaining, strengthening, and sharing culture and knowledge, art generates income for artists and creates economic opportunities for communities.”

Our point is:

- Supporting ATSI *cultures* is required by Closing the Gap Objective 16.
- Strengthening employment opportunities, through leveraging the Remote Engagement Program off the Government’s new five-year Action Plan to grow the

¹ In this study, ‘Aboriginal and Torres Strait Islander people’ is used to refer to Aboriginal and/or Torres Strait Islander people.

Indigenous Visual Art industry would, in addition, strengthen ATSI cultures, and would be seen as helping to achieve Closing the Gap Objective 16.

Discussion Topic 1 - Placements for job ready participants

AAAA supports the idea of finding opportunities for people in remote communities to contribute to their community even where there won't be enough jobs for everyone to find paid employment.

You are seeking to understand – "...what opportunities there are for participants to engage in activities or placements that are like having a job, and whether adjusting income support payments may help with this".

You ask for "...ideas on what kind of placements will help participants get in demand skills which can be carried out in local communities."

One of your four examples is – "participation in a creative community project, i.e., developing art for sale."

AAAA supports this idea and believes it is worth further consideration. We would be pleased to share our experience and ideas on how to make it happen.

Two recent AAAA submissions explore this idea in detail.

The 2020 *House of Representatives Standing Committee on Communications and the Arts* is currently inquiring into and reporting on Australia's creative and cultural industries, including "how to recognize, measure, and grow the economic, social, and employment opportunities in the Indigenous Visual Arts Industry."

Our November 2020 Submission is attached. We ask that it be read in conjunction with this REP submission, especially the 13 points which start at p. 5 and deal with how to grow job opportunities.

NIAA will be aware that the Government released its *National Indigenous Visual Arts Action Plan 2021 – 2025* on 21 October, 2021. We attach our Response to the Government's *Consultation Paper on Growing the Indigenous Visual Arts Industry* and ask that it be read in conjunction with this submission, particularly in relation to "Capacity building" (p 11), "skill building" (p12), "Sustainable growth" (p7).

There are many ideas in those submissions. AAAA would welcome the chance to discuss with you how to apply them in the REP context.

In the meantime, AAAA offers the following:

1. There is a need to focus on the *business* of art production and sale, and to avoid producing art simply for production's sake.
2. Many artists from remote communities choose to work in both art centres and independently. A significant number of remote artists choose to work entirely outside of the art-centre system, even though their home community may have an art centre.
3. Not all remote communities have an art centre.
4. Even in an art centre context, viability and sustainability require the identification of and satisfying of customer's needs, and on relevant business strategies, particularly marketing, advertising, pricing, especially via digital information technologies.
5. Getting new art to customers implies access to computer hardware, and to the IT skills needed to operate the computer software - existing and emerging. And so, art-business governance and management training will almost certainly need to be complimented with IT infrastructure and IT training. This training could of course be across the board, not just art-business.
6. IT infrastructure implies the need for reliable electricity. That need for reliable electricity could be the foundation for the installation of localized solar power generation and battery storage. Installation of solar systems and battery storage systems thereby become another training and employment pathway.

Other possible candidates:

7. Managing country – land care and management, feral pests, fire management - etc.
8. Tourism – training Indigenous Australians to create and support tourism enterprise - in particular, creating tourism events based on post pandemic domestic travel, training and event organisation.
9. Language – using local Indigenous people to strengthen knowledge of local language at the same time as teaching English language skills.

Discussion topic 2 – Support for Job-Ready Participants to get a Job.

Your REP Discussion Paper talks about people in remote areas who have skills and experience but who are under employed or unemployed and who seek greater assistance in competing for jobs.

AAAA is not qualified to offer ideas on the sorts of support and training that have proved helpful (Question 4), but in terms of our own experience, we are very supportive of the notions of induction, mentoring, and information on how the tax system works (Questions 5).

Q. 6 asks if there are “new ways to create opportunities for job ready people and suggests examples.

One way would be to grow the Indigenous Visual Art Industry – using the REP to leverage the Governments Action Plan for growing the Industry as outlined at the start of this submission.

Detailed ideas on how to do so are explored in the two Submissions attached

Discussion Topic 3 – Vocational Training

On Q.8: Those service providers trying to increase their knowledge and awareness of culturally specific issues to better assist Indigenous people need to begin with the understanding that Indigenous cultures are location - specific.

Australian service providers could use local Indigenous people to ‘educate’ the providers on ‘local’ culture and practice. Such service providers should be encouraged to engage with local or national aboriginal owned businesses.

Local Indigenous art and craft people could often be a good resource with which to open conversations.

NIAA could consider building a database of suitable ‘advisers’ in regions and locations. ‘Suitability’ should include using delivery partners culturally competent at skill transfer and capacity building so that local Aboriginal people become the delivery agents and advisers in the near term.

On Q. 9, we can’t think of a better type of training than the mentoring and incubation schemes referred to in our attached submissions.

We wonder what the scope is to require large mining companies to improve their operational skills - transfer results.

Discussion Topic 4 – Non-vocational Services to Overcome Serious Barriers to Employment

AAAA agrees with what some remote communities have told you about “a need for greater support to tackle barriers to participation and engagement”, and also that “under current arrangements there can be a lack of flexibility around personal circumstances that may reduce a person’s ability to move into a job in their community. Examples include:

- responsibility to family and community
- language, communication and literacy ability
- personal health and wellbeing (e.g., housing status, mental health).”

AAAA often encounters these issues when dealing with Members, especially in remote locations.

You ask for “views on practical approaches to drive better connections between participants and existing government support services so that participants are more able to join in community activities and the local economy.”

We are not confident we can add to what you already know.

Generally, the answer seems to be – all the Closing the Gap objectives.

NIAA will be thinking about prioritizing those objectives.

In our view, knowing which to focus on first means speaking with the relevant people at specific locations.

AAAA could perhaps help you by introducing you to relevant people in some locations – especially in and around Alice Springs and some other regions.

Discussion Topic 5 – Mutual Obligation Requirements

Apart from remembering that aboriginal culture varies from region to region and sometimes from community to community, AAAA does not feel it knows more about these matters than NIAA, so does not feel qualified to offer detailed ideas.

However, AAAA may be able help you (and other levels of government) coordinate existing activities more effectively – for example by using AAAA’s communication channels.

The following general points are worth restating:

1. Build approaches that reflect *actual* cultural contexts, not on well-meaning assumptions,
2. Maximise the use of local and national Aboriginal owned businesses,
3. Define what 'success' looks like,
4. Make sure that new proposals effect actual changes in communities. Too often, advisers 'arrive', do the work, and move on – but without changing what happens in communities.

Conclusion

The innovative proposals in your Discussion Paper reflect decades of hard-won experience.

Addressing the many complexities which you are grappling with will need to happen through a national conversation based on effective coordination - between layers of government, and with private organisations.

AAAA's response identifies several instances where we can assist NIAA - with coordination, with design, and with implementation.

We hope we have done enough to persuade NIAA to invite AAAA into the conversation.

Matthew Everitt
President

Three Attachments:

AAAA submission to the House of Representatives Standing Committee on Communications and the Arts

Inquiry and Report into Australia's creative and cultural industries and institutions The Indigenous Visual Arts Industry 5 11 20

Office for the Arts

AAAA Response to Consultation Paper on Growing the Indigenous Visual Arts Industry
30 December 2020

National Indigenous Australians Agency

AAAA Response to NIAA Discussion Paper on Indigenous Skills, Engagement and Employment Program (ISEP) *10 September 2021*