

7 September 2022

Productivity Commission

Aboriginal and Torres Strait Islander Visual Arts and Crafts

Indigenous.arts@pc.gov.au

Study of Aboriginal and Torres Strait Islander visual arts and crafts markets

Response to draft report

The Aboriginal Art Association of Australia (“AAAA” or “the Association”) is grateful for the opportunity to respond to the Commission’s draft report.

We start with overarching comments, then deal with specific requests.

General comment

The Study has clearly been rigorous, comprehensive, creative, and insightful.

The draft report is a solid foundation and roadmap to guide the work needed to realise the many benefits which can flow from implementing the Commission’s recommendations.

Our January 2022 submission discussed key concerns – about funding priorities and administration, about current and future workforce needs, about initiatives to support the sustainability of the sector, and about the need for a formal decision-making body that was more inclusive of Aboriginal and Torres Strait Islander artists and organisations.

The summary of draft recommendations (p.29) encompasses every one of those concerns. In less than half a page, you recommend *what* needs to be done to address each concern, *why* an independent evaluation needs doing, and *how* to do the evaluation. You then contextualise all of that by identifying and explaining the expected benefits.

AAAA’s August 2022 submission to the consultations on the new *National Cultural Policy* (“NCP”) hopefully demonstrates the significance which AAAA attaches to the Commission’s draft recommendations, especially the recommendation that the Australian Government establish a formal shared decision-making partnership with Aboriginal and Torres Strait Islander artists and organisations. That decision-making partnership is, we contend, fundamental to the proper evaluation which the Commission recommends of funding effectiveness, workforce needs, and identifying sustainability initiatives and, more generally, to help Australia’s First Nations visual arts and crafts sector to fully realise its vast economic, cultural, and social potential.

AAAA has asked for the forthcoming *National Cultural Policy* to mention and support the Commission’s draft recommendation to establish that decision-making partnership, and to support its use to undertake the recommended evaluations. Our NCP submission also identifies several other ways such a decision-making partnership would support a thriving First Nation’s visual arts and

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crafts ecosystem. We attach a copy and invite you to consider those as part of this response, particularly our comments on the design of Indigenous Cultural Intellectual Property legislation, and on the link between growing Indigenous visual arts and craft and securing Closing the Gap objectives.

We mention another consultation issue.

The Commission seeks further input to the study and is “particularly keen to hear the views of Aboriginal and Torres Strait Islander people on the findings and recommendations in this draft report” (p.57).

AAAA’s Board of 10 includes five Indigenous members and five non-Indigenous members and is led by me, an Aboriginal man of the Warring-Illum-Balug people from Taungurung Country. The Association has an Aboriginal Cultural Council on which it relies for advice on matters of First Nations culture.

In the time available and given the logistics of our membership base, the AAAA has not been able to fully canvas the draft with our approximately 250 Aboriginal artist members, 50% of who are in remote areas. Our response nevertheless incorporates the large stock of Indigenous member’s perspectives shared with us over time; the perspectives of our 5 Indigenous Board members; and the advice our Aboriginal Cultural Council.

There may be another way to share AAAA’s Aboriginal and Torres Strait Islander member’s perspectives and priorities with you before the final report.

In our January submission responding to your Issues Paper, AAAA offered to facilitate discussions on “other data sources”, on souvenir sales, and on several other issues. AAAA saw such discussions as a way of at least partly addressing the logistical difficulties we face in centring Indigenous members perspectives, priorities, and knowledges.

That offer to meet still stands if circumstances allow.

We turn to relevant draft findings, recommendations, and information requests.

Draft Finding 3.4

Artworks by independent artists have a material presence in Aboriginal and Torres Strait Islander arts and crafts markets.

AAAA is relieved to see the acknowledgement of the material presence of artists who practice outside of the art-centre system. The draft report also correctly recognises the need to ensure that independent artists are properly supported. (see Draft Findings 8.3 and 9.1 and the Summary of the Commission’s draft recommendations (p.29)).

AAAA questions one part of the following sentence in 3.4:

“In addition, independent artists produce commissioned artworks and sell direct-to-consumers through art fairs, online marketplaces and social media.”

Our experience is that independent artists are not adequately supported, evidenced by the fact that they generally have little or no access to sell their art through art fairs.

As we understand it, this unfair discrimination has emerged because of the way the Government's Indigenous Visual Art Industry Support scheme has come to be administered.

We raised and discussed this issue in our January submission and asked for it be investigated as part of the Study. (p.10, p.14-15).

That investigation, we presume, remains undone, but AAAA gratefully acknowledges that the Commission's draft recommendations (for evaluations of the effectiveness of expenditure directed to the Aboriginal and Torres Strait islander visual arts and crafts sector) will encompass whether independent artists get proper access to art fairs.

Pending that evaluation, AAAA's understanding remains that, despite the wording of the IVAIS (which refers to Indigenous artists and therefore includes independent Indigenous artists), the administration of the IVAIS denies proper art fair access to Indigenous artists who choose to, or must, work outside of the art centre model.

AAAA cannot see how the current IVAIS administration is consistent with relevant law, policy, and guidelines.

Pending the evaluation, we ask that the last sentence in Draft Finding 3.4 be amended to reflect our reservations. We offer the following amendments for consideration:

In addition, independent artists produce commissioned artworks and sell direct-to-consumers through ~~art fairs~~, online marketplaces and social media. We suggest the following words be added -*Some parties have expressed their concern that independent artists are not able to sell to customers via art fairs. There are gaps in support services for independent artists (see Draft Finding 8.3). Access to art fairs is a matter for evaluation in accordance with the summary recommendations in this report.*

Draft Finding 4.1

Visual arts and crafts are considered authentic Aboriginal and Torres Strait Islander arts and crafts if they are authored by an Aboriginal and Torres Strait Islander person, or produced under a licensing agreement.

AAAA see this definition as a valid starting point, but we have concerns about the two further explanations in 4.1. The first explanation is:

For the purpose of this study, a product or artwork is considered *authentic* Aboriginal and Torres Strait Islander visual art or craft if it is:

- an original piece authored (or co-authored) by an Aboriginal and Torres Strait Islander person, or
- produced under a licensing agreement with the Aboriginal and Torres Strait Islander artist(s).

That first explanation seems satisfactory, but its relationship with the second explanation is of concern. The second explanation is:

Aboriginal and Torres Strait Islander visual arts and crafts *that do not meet these criteria, including those that infringe the copyright of an Aboriginal and Torres Strait Islander artist's work* (our emphasis), or are Indigenous-style arts and crafts made by non-Indigenous people without licensing agreements, are considered *inauthentic*

We can see a view being put that a work that infringes copyright may breach a law but may not touch on the work's authenticity. **In everyday language - a work may be authentic even if it is in breach of copyright.**

Perhaps an "original piece" in explanation 1 can, by definition, *only* be a piece that does *not* infringe any copyright. If that is the intention, then that intention may need spelling out more clearly in explanation 1.

If that is not the intended meaning of "original piece", then we see a potential conflict between explanation 1 and explanation 2. **This conflict may mean that the reference to infringement of copyright should appear in explanation 1, rather than explanation 2.**

We can't see how the drafting technique of using the above definitions "for the purpose of the study" can overcome the way the relevant terms are already understood in practice.

Draft Finding 4.2

Inauthentic Aboriginal and Torres Strait Islander arts and crafts are rife in the consumer product, digital and print-on-demand merchandise markets

AAAA agrees with this draft finding.

Finding 4.2 is important, partly because it correctly identifies the specific markets where inauthentic arts and crafts are rife.

That is not the case for 4.3 and 4.4 Our concern is that draft findings 4.3 and 4.4 are likely to be misinterpreted because neither have the same precision as 4.2 when describing which market, or which part of the market, has the problem with inauthentic products.

The first sentence in 4.2 reads – "Inauthentic products dominate the consumer product (mostly wholesale souvenirs), digital, and print-on-demand merchandise markets."

But the first sentence in 4.3 begins – "The existence and prevalence of inauthentic arts and crafts *in the market* has wide-ranging..." (Our emphasis)

We ask that 4.3 and 4.4 use the same level of precision and accuracy as 4.2.

4.3 would then read - 'The existence and prevalence of inauthentic arts and crafts in the consumer product (mostly wholesale souvenirs), digital, and print-on-demand merchandise markets has wide ranging...'

The heading in 4.3 should also be similarly amended to read as follows:

‘The negative effects of inauthentic visual arts and crafts in the consumer product, digital and print-on-demand merchandise markets outweigh any benefits’

We ask that the same changes be made to the heading in Draft Finding 4.4 and to the first sentence in Draft Finding 4.4.

If the Commission wonders why AAAA is so concerned about precise language in the report, please read the attached ABC news article published the same day the Draft Report was published.

At p.2 of the 19 July 2022 ABC online news article is the claim:

“Around \$250 million of **Indigenous art** was sold in 2019-2020, but a report from Australia's Productivity Commission shows **only around one in three items sold** were actually produced by an Indigenous artist or business.” (Our Emphasis)

The claim under the photo on p.1 of that ABC article reads:

“According to a new report, only one in three Indigenous artworks is produced by an Aboriginal or Torres Strait Islander person”

AAAA accepts that these statements seriously misunderstand what the draft report says.

The incorrect media statements nevertheless demonstrate how the ordinary reader and consumer can become confused and nervous about whether they have done the wrong thing and if their purchase is real or fake. This is why we ask the Commission to help minimise such potential damage to the confidence and trust needed to underpin thriving and sustainable Indigenous visual art and craft markets.

We wish we could say that that sort of mistaken media coverage was uncommon. It is not, partly because some parties in the sector seek to misinform the public, presumably in a misguided attempt to shore up their competitive position.

Draft Finding 5.1

Some approaches to distinguish between authentic and inauthentic Aboriginal and Torres Strait Islander art and craft products are already in place

AAAA asks that AAAA's Certificate of Authenticity scheme be acknowledged in this draft finding by adding the following words within the bracket on line 3 after the word “Code”. “or by the AAAA for their members”.

The draft refers to the AAAA elsewhere in the draft report. We ask that “AAAA” be added to the list of Abbreviations at the start of the report.

Draft Recommendation 5.1

A mandatory labelling scheme for inauthentic products should be developed

AAAA is comfortable with the reasoning and the Draft Findings, in part because we assume there will be a proper decision-making process.

We make one suggestion about that decision-making:

The Australian Government should develop a mandatory information standard to require the labelling of inauthentic Indigenous-style products to indicate to consumers that they are not created by or under licence from an Aboriginal and Torres Strait Islander person.

In developing the standard, the Australian Government should engage effectively with Aboriginal and Torres Strait Islander people.

AAAA strongly endorses the recommended notion of ‘effective engagement’. Such engagement will be a necessary component of a workable outcome.

“Effective engagement” is, however, a broad and somewhat vague term. With that in mind, we would like to see this recommendation expressly refer to the ‘formal shared decision-making partnership between the Australian Government and Aboriginal and Torres Strait Islander artists and their organisations’ the Commission previously recommended in the Summary Recommendations.

That decision-making partnership is, we believe, the only practical way to ‘answer’ the questions in your Information Request 5.1.

We canvassed earlier (p.3) our concerns about possible unintended consequences arising from the proposed authenticity criteria. (draft finding 4.1)

Draft Recommendation 7.2

New cultural rights legislation should be introduced to recognise and protect cultural assets in relation to visual arts and crafts

AAAA supports this recommendation.

We see the realisation of this cultural right depending heavily on the rigour and quality of the decision-making analysis, conversations and consultation envisaged in each of the underlying Information Requests 7.1, 7.2, 7.3, and 7.4.

With that decision-making in mind, we would again want to see this Recommendation incorporate a specific reference to the ‘formal shared decision-making partnership between the Australian

Government and Aboriginal and Torres Strait Islander artists and their organisations' which the Commission recommended in its Summary Recommendations.

Draft Finding 7.2 is especially important:

A cultural rights regime must balance the interests of traditional owners and those seeking access to cultural assets

The recognition of cultural rights needs to strike the right balance between the interests of traditional owners and the interests of those seeking to access and use cultural assets. This will help ensure that the preservation and maintenance of culture does not come at the cost of preventing traditions and culture from evolving or adapting over time. To achieve this, checks and balances should be built into the legislative regime — including by specifying criteria for: what is protected under the legislation; who can take action to assert cultural rights; and what uses of cultural assets require authorisation.

We repeat here what AAAA submitted to the Governments National Cultural Policy consultation:

The Association asks the National Cultural Policy to support the Productivity Commission recommendation to establish a formal shared decision-making partnership between governments and Aboriginal and Torres Strait Islander artists and organisations. That decision-making partnership will:

- Help governments understand how best to design legislation to clarify and balance the rights and responsibilities of Traditional Owners with those who use Indigenous Cultural Intellectual Property in visual arts and crafts. Getting this balance right is needed for Australia to enable both collaboration and artistic innovation. In our view, there is nothing more important than finding ways to grow the sector such that there is balance of communal needs and interests, and individual needs and interests. This is a way to future-proof arts practice.

AAAA does not underestimate the difficulties.

But complexities are not a reason why Australia should not attempt to design and implement an extended form of intellectual property.

AAAA exists to protect the cultures that underpin the genius that creates the art.

Indigenous Cultural Intellectual Property seeks no more than that.

Draft Recommendation 7.1 [We have looked at 7.1 in the same order that it appears in the draft report]

An Indigenous Cultural and Intellectual Property Strategy is needed to coordinate regulatory measures

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AAAA agrees with this recommendation, noting that its success also rests on the quality of the analysis and consultation envisaged for a new legislative regime for Indigenous Cultural Intellectual Property.

We see that:

The development of the strategy should be led by the Minister for Indigenous Australians, in partnership with state and territory governments and Aboriginal and Torres Strait Islander people.

We want this should say more than simply “Aboriginal and Torres Strait Islander people”.

We would want to see this Recommendation incorporate a specific reference to the ‘formal shared decision-making partnership with Aboriginal and Torres Strait Islander artists and their organisations’ which the Commission recommended in its Summary Recommendations. Without that additional detail, we fear that matters of governance, decision-making authority, and an independent means of ensuring accountability might fall through the cracks and the wording proposed in the draft might not achieve its intended purpose.

This could perhaps be worded as follows:

The development of the strategy should be led by the Minister for Indigenous Australians, in partnership with state and territory governments and with Aboriginal and Torres Strait Islander people, including, in particular, Aboriginal and Torres Strait Islander artists and their organisations.

AAAA recognises that an “Indigenous Cultural AND Intellectual Property Strategy will extend beyond Indigenous visual art.

But Indigenous visual art will always be necessarily and significantly impacted and should necessarily be part of the decision-thinking and analysis.

Draft Finding 8.2

Enforcement of the Indigenous Art Code is constrained by resourcing

The Indigenous Art Code is one of the key mechanisms used to mediate interactions between artists and the market. However, the company enforcing the code is under-resourced and overstretched.

AAAA believes that there is another characteristic of the IAC that can’t be omitted if the IAC is to fulfill its important self-regulatory role.

We ask that the following words be added:

“Some in the sector maintain that the Code’s Board does not yet have the full range of skills and experience across the whole of the sector needed to successfully fulfill its role, including a lack of meaningful representation for self-funded artists operating outside of the art centre model.”

We ask that a review of the required skill and experience be incorporated in the forthcoming Commonwealth evaluation of the IAC’s effectiveness. See draft recommendation 10.1.

Draft Finding 8.3

Artists face difficulties accessing justice and other support services

There are also gaps in support services for independent artists, including those working outside of areas served by art centres and regional peak organisations.

AAAA gratefully acknowledges this draft finding.

We want to add, after the word ‘organisations’, the words, “as well as those artists practising independently in areas that do have an art centre.”

Draft Recommendation 10.3

Australian Government funding should be evaluated to inform future arrangements.

The Australian Government should commission an independent evaluation of the effectiveness of Australian Government expenditure directed to the Aboriginal and Torres Strait Islander visual arts and crafts sector. The scope of the review should include the Indigenous Visual Arts Industry Support (IVAIS) program, the National Indigenous Visual Arts (NIVA) Action Plan and relevant Australia Council programs.

This evaluation should be undertaken in partnership with Aboriginal and Torres Strait Islander representatives of the sector, in accordance with the principles of the Productivity Commission’s *Indigenous Evaluation Strategy* and be completed by December 2025. The evaluation should consider:

- how effectively funding has met existing objectives, and whether these objectives are the right ones
- whether and what additional support is required to help meet sector priorities (for example, whether a sector-wide Aboriginal and Torres Strait Islander workforce strategy is required)
- what aspects of the NIVA Action Plan, such as support for independent artists, should be maintained as part of ongoing government funding to the sector.

The Association gratefully supports this crucially significant Recommendation.

We particularly welcome the evaluation of the effectiveness of Australian Government funding under the IVAIS program, the NIVA Action Plan, and the relevant Australia Council programs, and that the evaluation will look for ways to improve longer term support for self-funded Indigenous artists practising their art outside of the art centre system.

AAAA has been requesting such accountabilities take place over many years for this type of evaluation to happen, as evidenced by the many submissions we attached to our submission in response to your Issues Paper.

Thank you.

We expect that the evaluation will confirm that the Government's support of the Indigenous Visual Art Industry is as a success story worth celebrating, but that there are big opportunities to grow that success.

We are pleased that the evaluation is to accord with the principles of the Productivity Commission's *Indigenous Evaluation Strategy*, and hope that the Commission will be able to stay connected, perhaps via your ongoing Closing the Gap monitoring. Australians now understand that supporting Indigenous cultures, by supporting Indigenous Visual Artists, helps to 'Close the Gap'.

And that explains why AAAA is excited to support your Draft Recommendation 10.4.

Draft Recommendation 10.4

Aboriginal and Torres Strait Islander people should be part of shared decision-making in setting objectives for government funding for visual arts and crafts.

The Australian Government (led by the Australian Government's Office for the Arts) should establish a formal shared decision-making partnership with Aboriginal and Torres Strait Islander artists and art organisations to help identify funding priorities and strategic initiatives to support growth across the sector.

Hallelujah.

Information request 10.1 asks about the best approach to bring together the range of sector perspectives.

We have not been able in the time available to add much to what we said in our Jan. 2022 submission, at p. 4:

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.

Your Information request 10.1 contains part of the answer – that is, make sure you deal with the range of perspectives. In other words, understand how the whole sector is interconnected and interdependent. Include that whole.

We will give this a lot more thought in anticipation of discussions with the Australian Government's Office for the Arts.

Concluding Comments

The Minister for the Arts foreword to the October 2021 *National Indigenous Visual Arts Action Plan 2021 – 2025* said this:

"...we are looking to strengthen the sector, protect culture and diversify business models. This will help many Aboriginal and Torres Strait Islander artists, organisations and businesses to grow and will reinforce the ongoing economic viability of this important industry. Respect and flexibility will continue to be key to producing and selling art in a way and at a pace that new markets demand. This brings expanding opportunities for an industry that makes the creativity of the world's oldest continuing cultures accessible to the world.

Indigenous visual art is integral to Aboriginal and Torres Strait Islander peoples' identity and is vitally important to Australia and all Australians. It sustains and strengthens Aboriginal and Torres Strait Islander communities, is an important way to express culture, and provides opportunities for employment, skills development and income."

The Aboriginal Art Association of Australia believes that the Productivity Commission's Recommendations arising from its examination of the value, nature and structure of the Aboriginal and Torres Strait Islander visual arts and crafts markets have the potential to make the National Visual Arts Action Plan come alive by helping to:

- Strengthen the sector,
- Protect culture,
- Diversify business models,
- Help many Aboriginal and Torres Strait Islander artists, organisations and businesses to grow,
- Reinforce ongoing economic viability of the sector especially through more efficient supply chains,
- Increase respect and flexibility as a key to producing and selling art in a way and at a pace that new markets demand.

AAAA believes that, if the Commission's Recommendations about *what* market aspects to evaluate and *how* to evaluate them can be made happen properly, then significant economic, social, and cultural benefits will extend to Indigenous individuals and communities, and to the wider Australian community.

AAAA can think of no more important strategy than doing the right evaluations the right way.

AAAA hopes the Productivity Commission will find ways to stay connected and involved in the opportunities.

Thank you for the quality of the Study, and for our opportunity to contribute.

Matthew Everitt
Warring-Illum-Balug of Taungurung
President, Aboriginal Art Association of Australia

National Cultural Policy Submission August 2022

The Aboriginal Art Association of Australia

Question 1. The Aboriginal Art Association of Australia (“the Association”) serves and represents artists, individuals and organisations that produce, promote, protect, and support Indigenous art, and the cultures that nurture First Nations art. Our Board of 10 includes five Indigenous members and five non-Indigenous members and is led by me, an Aboriginal man of the Warring-Illum-Balluck people from Taungurung Country. The Association has an Aboriginal Cultural Council on which it relies for advice on matters of First Nations culture. Membership includes over 250 First Nations artists, comprised of artists practising independently of art centres, artists working exclusively with art centres and artists working across both sectors. About 50% of Artist members are from remote areas. Our 50 trade and associate members are commercial galleries, dealers, art centres, licensors and mixed retail outlets marketing fine art and souvenirs, including First Nations participants both within and outside the art centre model. The Association is the only body that speaks for all parts of the sector and is uniquely equipped to provide insights across the full range of issues affecting the whole sector.

Question 2. This 2022 consultation has taken the 5 goals of the 2013 National Cultural Policy and distilled them into 5 pillars. Submissions to this consultation are asked - ‘what challenges and opportunities do you see in the relevant pillar(s)?’. Our submission focusses on Pillar 1 but touches on Pillars 3, 4 and 5.

Pillar 1 First Nations Challenges and Opportunities

At the direction of the Commonwealth Government, The Productivity Commission has just spent 12 months “examining the value, nature, and structure of the markets for Aboriginal and Torres Strait Islander visual arts and crafts” to “consider problems” and to “make recommendations for governments to address them”. (Productivity Commission Issues Paper, September 2021, p.1)

There cannot be a more authoritative source of “challenges” and “opportunities” in the Indigenous visual art and craft sectors. We strongly endorse the Productivity Commission’s recommendations.

The Productivity Commission’s *Summary of draft recommendations* includes recommendations that are specifically relevant to: “support thriving and self-determined First Nations creative ecosystems” (Pillar 1); “support skilled, diverse ecologies of artists” (Pillar 3); “strengthen the capacity of the creative sector” (Pillar 4); and to “build sustainable, networked and globally recognised creative industries” (Pillar 5). (Australia Council for the Arts *National Culture Plan Consultation Framing Submission*, p.1).

The challenge – funding priorities and workforce needs

“Decisions on funding priorities – including responding to current and future workforce needs – do not adequately take into account the priorities of Aboriginal and Torres Strait Islander people and communities”. (Productivity Commission draft recommendation, p.29) (our emphasis)

The opportunity - funding and workforce needs – what to do, why, and how

What to do - *“Governments – in partnership with Aboriginal and Torres Strait Islander people – should evaluate the effectiveness of expenditure directed to the Aboriginal and Torres Strait Islander visual arts and crafts sector”.* (Productivity Commission draft recommendation p. 29) (our emphasis)

Why do it - “*An independent evaluation would establish appropriate funding for the sector, including art centres and independent artists, and enable governments to deliver funding that aligns with community priorities*”. (Productivity Commission p. 29)

How to do it - “*The Australian Government should establish a formal shared decision-making partnership with Aboriginal and Torres Strait Islander artists and organisations*”. (Productivity Commission p. 29).

“*Shared decision making would help communities and governments to direct funding toward pressing priorities and to identify strategic initiatives to support the sustainability of the sector*”. (Productivity Commission p. 29)

The Productivity Commission’s recommendation about establishing a decision-making partnership to address the funding and workforce needs challenge is in our opinion the most important opportunity for supporting ‘thriving and self-determined First Nations visual arts and crafts ecosystems’ (Australia Council for the Arts, Framing Submission, p.1)

The Association asks the National Cultural Policy to support the Productivity Commission recommendation to establish a formal shared decision-making partnership between governments and Aboriginal and Torres Strait Islander artists and organisations. That decision-making partnership will:

- Help all First Nations’ workforce and capacity building in a way that enables self-determination in governance and leadership. (Australia Council Framing Submission - First Nations – Focus area 1)
- Help governments understand how best to design legislation to clarify and balance the rights and responsibilities of Traditional Owners with those who use Indigenous Cultural Intellectual Property in visual arts and crafts. Getting this balance right is needed for Australia to enable both collaboration and artistic innovation. In our view, there is nothing more important than finding ways to grow the sector such that there is balance of communal needs and interests, and individual needs and interests. This is a way to future-proof arts practice.
- Help Government to better understand how growth of the Indigenous Visual Art sector will support achieving outcomes across the Closing the Gap framework. As the Productivity Commission has recently recognised, art generates income for artists and creates economic opportunities for communities, as well as maintaining, strengthening, and sharing culture and knowledge. (Productivity Commission Issues Paper, p. 1)
- Help Government build on its longstanding and successful support of the Indigenous Visual Arts sector. The Government’s recent *National Indigenous Visual Arts Action Plan 2021 - 2025* is an important document and strategy, especially when the funding and workforce challenges and opportunities discussed above have been resolved.

We want to highlight one issue where a shared formal decision-making partnership will particularly help to ensure that potential growth in the sector is achieved. The Productivity Commission Study finds:

- There are no comprehensive data on training and development support available to independent artists in the visual arts and crafts sector. (p.324)
- It is clear that accessing grants through a competitive process can be challenging. (p.324)

- Appropriate training and professional development opportunities appear limited and, in particular, it is not clear how adequate or accessible professional development opportunities are for independent artists.(p.324)

A whole of industry approach

The Association contends that the shared formal decision-making partnership will also help governments realise that achieving the full potential growth of the Indigenous Visual Arts industry depends on understanding the interconnectedness of *the whole* of the sector.

The Minister for the Arts raised this in his interview with *Limelight* on 30 June 2022:

“So that’s why in redoing cultural policy I want to make sure we are fully focussing on the commercial significance of the sector and the role of the artist as a worker.”

In our opinion, one way for the National Cultural Policy to achieve that focus would be to adopt the description of the Indigenous Visual Art Industry set out in the 2020 *Consultation Paper on Growing the Indigenous Visual Arts Industry* (p.5):

“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”.

“The (Action) plan will also assist the Government to identify ways it can support the Indigenous Visual Arts industry as a whole”.

As part of the ‘whole of industry’ approach, the language and narratives on how independent artists are seen and viewed within arts markets need to demonstrate the full scope of the marketplace more clearly. This pan-industry approach will improve access to market, supply chains, and with developing new and innovative market channels.

Question 4. Are there other things that you would like to see in a National Cultural Policy.

Goal One from the 2013 *Creative Australia* was - “recognise, respect, and celebrate the centrality of Aboriginal and Torres Strait Islander cultures to the uniqueness of Australian identity”.

In our view, that Goal could today be expressed as – ‘celebrate the recognition and respect now given by Australians to the expression of Indigenous cultures through visual arts and crafts’.

The Association would like to see the National Cultural Policy recognise and celebrate the success of the Commonwealth Government’s policy support for the Indigenous Visual Art Industry, at the same time as recognising the potential for significantly more growth.

If so, a matter for inclusion in National Cultural Policy might be expressed as – ‘How best does Australia build on that Australian policy success story?’

Name: The Aboriginal Art Association of Australia

Contact: Matthew Everett

Australia's Indigenous art industry is worth a quarter of a billion dollars, so why do artists only end up with a fraction of the profits?

ABC Online news

Political reporter [Dana Morse](#)
Posted Tue 19 Jul 2022 at 4:18am



According to a new report, only one in three Indigenous artworks is produced by an Aboriginal or Torres Strait Islander person. (ABC News: Matt Garrick)

Aboriginal art is becoming a big business, with both Australian consumers and tourists wanting to take home a memento from Down Under.

Key points:

- In 2019-20, \$250 million worth of Indigenous art and crafts were sold
- However, only one in three Indigenous artworks is produced by an Aboriginal or Torres Strait Islander person
- The Productivity Commission wants inauthentic Indigenous art, crafts and souvenirs to be clearly labelled

However, it's not easy to verify if your boomerang or painting came from an Indigenous artist or if it was made in Indonesia, and it's Aboriginal and Torres Strait Islander people who are suffering as a result.

Around \$250 million of Indigenous art was sold in 2019-2020, but a report from Australia's Productivity Commission shows only around one in three items sold were actually produced by an Indigenous artist or business.

Wiradjuri woman Jarin Baigent has seen firsthand how Aboriginal artists get cut out of their own market, with cheap, mass-produced copies forcing traditional owners out of business.



Jarin Baigent says Aboriginal artists are being cut out of their own work. *(Supplied: Jarin Baigent)*

"We've got uncles who do make handmade boomerangs, who at one point in time probably had a pretty solid opportunity to supply somewhere," she said.

"Then you see the one of these business models that participate in fake art that will go and find a supplier overseas, generally it's made in Indonesia, and that supplier is going to go with the cheaper option.

"Then you've got an uncle there who doesn't have any income anymore. He's creating authentic Aboriginal art and artefacts, and he's completely cut out of the industry."

It's part of the reason Ms Baigent co-founded Trading Blak, a marketplace for all Aboriginal-owned and operated businesses to sell their products.

Ms Baigent said she also wanted to combat a rise in "business blackface", where non-Indigenous companies selling products commonly produced by Indigenous people but are not up-front about where the profits are going.

"I had a non-Aboriginal business who participates in 'business blackface', where they deceive customers by thinking that they are Aboriginal-owned," she said.

"[They] did a business arrangement with me and then went and duplicated my products.

"What you find is that Aboriginal people who step into business or art as economic pathway, it's encouraged to start off with and then you go into this entire industry where you see such terrible exploitation that is so heavily resourced."

Tackling fakes a tough problem

Fakes and copies are a big problem for Indigenous artists trying to start a business, but it's not easy to enforce rules around who can create certain styles of art.

Productivity Commissioner Romlie Mokak said it was also difficult to expect consumers to be able to tell the difference.

"The consumer would find it very difficult, in some cases, to determine what is authentic and what is inauthentic, so they can't make the judgements themselves. You can't help but lead to the conclusion that this comes at a cost and [an] economic cost," he said.

Previous schemes — such as the boomerang tick introduced more than 20 years ago — were a way for producers to show they were making authentic products, but the uptake was limited and presented another barrier for getting products into the market.

Romlie Mokak says it's difficult for consumers to tell the difference between authentic and inauthentic art.*(Image: Twitter)*

A new report from the Productivity Commission suggests the problem could be tackled from the other side by putting the onus back on non-Indigenous producers.

It recommends "inauthentic" art, crafts and souvenirs be labelled as such, so that consumers can make an informed choice about the businesses they are supporting.

Mr Mokak said it would be a much-fairer system.

"We think that the burden ought to be on the producers of inauthentic products," he said.

"What that means is that there's less of a burden then on Aboriginal and Torres Strait Islander people themselves who are making authentic products to have to label their products as authentic."

Ms Baigent said she welcomed the idea but would like to see additional deterrents for producers who undercut and copy Indigenous businesses.

"Non-Aboriginal participation and exploitative business models that we're seeing across fake Aboriginal art or blackface businesses or other exploitative models, it's really important to be clear about the fact that they're actively blocking our children's futures," Ms Baigent said.

"They're actively blocking Aboriginal people's ability to thrive and prosper in the business sector.

"I think there needs to be punitive infractions given, too. We need to be issuing fines to people [who] are partaking in this, you know. This has been going on for generations."

Protecting profits and protecting culture

The labelling scheme is just one of a number of measures the Productivity Commission is recommending be implemented to ensure Indigenous producers get a fair share of the art and souvenir market.

Mr Mokak said that it was not just the loss of profits that was harming communities, but the unauthorised reproduction of their stories and knowledge in inauthentic artworks.

Indigenous cultural IP and copyright

Cultural intellectual property is a right that Indigenous people have to protect their traditional art and culture but it can often be overlooked. Here's what it entails.



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The commission also wants to see Indigenous Cultural Intellectual Property (ICIP) laws strengthened, so that things such as sacred symbols can be protected from wider use.

"We don't have laws in this country that give specific protections to Indigenous cultural and intellectual property," Mr Mokak said.

"There should be new legislation to recognise the rights of Aboriginal Torres Strait Islander people to their traditional knowledge and cultural expressions.

"They should have an ability, in legal terms, a course of action, where others have breached those protections, where a non-Indigenous person might have plagiarised or copied a traditional motif belonging to traditional owners."

Ms Baigent said the majority of consumers wanted to buy from Indigenous-owned and run businesses and, ultimately, felt conned when they found out that was not where their money was going.

"Every single day, we have a customer that says, 'Oh, my gosh. I thought that was an Aboriginal business. I feel really angry. And I feel really misled'. Every single day we hear those comments," she said.

"We called, probably about two years ago, for non-Aboriginal businesses to clearly state in their marketing that they are non-Aboriginal owned.

"Some complied, others didn't. I think the ones that complied did that because it is legislated that you cannot mislead the public, you cannot mislead consumers."

Inauthentic art just the tip of the iceberg



Fake (inauthentic) products and merchandise

Inauthentic Indigenous items mass-produced overseas. (Supplied: Indigenous Art Code)

Ms Baigent said "business blackface" was rife in a number of industries where Indigenous people have tried to break into the market, including food, tourism and clothing.

"They're using First Nations knowledge. They're decorating their packaging with our artworks, in our culture. They're heavily marketing their socials and outputs with Aboriginal people's faces, to give a misleading misrepresentation of who and what they are," she said.

"If you actually want to have impact, and respect Aboriginal people, respect our culture and invest in our communities, and know that you're buying something that's authentic, then, yes, we do need something that shows consumers where they can do that.

"An Aboriginal business is going to have impact. We're going to have intergenerational impact. With the setting up of that business, we're more likely to employ Aboriginal people, and that intergenerational knowledge and resources, well, is invaluable."

The report from the Productivity Commission will now go out for consultation, before a final report is compiled and submitted to the federal government at the end of November.