

Submission to the Productivity Commission on *Aboriginal and Torres Strait Islander Visual Arts and Crafts* draft report

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Thank you for your invitation dated 19 July 2022 to make a submission on the draft report *Aboriginal and Torres Strait Islander Visual Arts and Crafts*.

By way of synoptic background, I have had a long-standing engagement with the First Nations visual arts sector in research, policy advising and advocacy over several decades. In 1989 I chaired a review of the Aboriginal Arts and Crafts Industry for the federal government and also provided an expert report in the Federal Court copyright case *Bulun Bulun & Nejlam*. In 2002 I led a team that provided expert advice to the Australian Competition and Consumer Commission on the Indigenous Visual Arts Industry and in 2003 I was engaged as a consultant to develop the Indigenous Arts Strategy for the NT a strategy launched by Clare Martin at the Garma Festival.

Over the years I have made several submissions to parliamentary and other inquiries focusing on issues such as returns to artists, support for the sector, the vexed issue of authenticity and the resale royalty scheme. Most recently in 2019 I provided submission to the Environment and Communications Legislation Committee Inquiry into the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019 and provided an expert report in the Federal Court case *Australian Competition and Consumer Commission v Birubi Art Pty Ltd*. I have also assisted several community-based art centres with business planning and have curated or assisted in the curating of several high-profile Aboriginal art exhibitions in Australia and overseas.

Just on a year ago, on 23 August 2021 I met with Commissioner Romlie Mokok and others from the Productivity Commission in a video conference to provide some verbal input into the development of the draft report.

Aboriginal and Torres Strait Islander Visual Arts and Crafts is an extraordinarily thorough attempt to come to grips with the complexity and opacity of this sector and some of the challenges it and Indigenous artist practitioners continue to experience some five decades after the Australian government began to make some support efforts via the Aboriginal Arts Board of the Australia Council. In some ways it is disappointing, but not entirely surprising, that several issues like appropriate forms and levels of support for the sector and the threats posed by inauthentic, mainly manufactured, tourist art continue to plague the sector. This is despite sustained support from governments, most comprehensively under the Australian government's Indigenous Visual Arts Industry Support (IVAIS) program that has operated relatively unchanged for 30 years now (since 1991). And despite some successful legal and regulatory interventions especially by the ACCC through the Federal Court.

In this submission I do not intend to either rehearse or analyse this policy history as this is done very comprehensively in the 350-page report and elsewhere. Instead, I focus and

provide some brief commentary on the four draft recommendations that have been made to date. I do this after a brief visit to the Northern Territory completed yesterday when I had opportunity to view the diverse excellence evident in the 2022 Telstra National Aboriginal and Torres Strait Islander Art Awards in Darwin, but also to visit some art centres and retail outlets in the Kakadu-West Arnhem region.

Draft Recommendation 10.1: The Indigenous Art Code can be strengthened through a joint commitment of government and industry.

All my dealings with Indigenous Art Code Ltd indicate that it is a highly professional and very effective organisation given that it operates on a shoestring budget. I am sure that the retailer membership and associated signage at stores relieves to some extent any consumer anxiety about ethical dealings with Indigenous artists and perhaps heightens interest in what the Code is seeking to achieve.

I concur that Indigenous Art Code Ltd should be strengthened with more support from government. But I caution that multi-stakeholder funding arrangements can be hard to manage, especially as funding stakeholders often seek accountability to suit their agendas. And I question the recommendation that higher membership fees from dealer members should be levied to co-fund strengthening. It seems to me that the effectiveness of the Indigenous Art Code will be enhanced the greater the number of retailers members adhering to the Code. Increasing membership fees might drive away smaller retailers who might question the marginal benefits of membership. And in any case, much of what the Indigenous Art Code does is in the realm of public education and is a public good and should, in my view be publicly funded.

It is noted at Recommendation 10.2 that the Indigenous Art Code should be reviewed but it would be helpful to clarify who should undertake this review and its terms of reference. Of course, it would be desirable to have detailed performance indicators to inform evaluation of the Code's effectiveness as recommended, but it is difficult to imagine the form of performance indicators that could be readily collected. A key issue in my view is whether members of Indigenous Art Code Limited adhere strictly to the Code's principles. My recent observations raise some questions about the pricing policies of retail outlets, there is some marked variability in the prices paid for almost identical art by the same artist at different outlets. This in turn raises questions about what artists are paid depending in part on point of purchase but also whether purchase is outright (cash up front) or on a consignment basis. There are also age-old questions about the cultural appropriateness of selling art from diverse sources at tourism attractions that are looking to promote local and regional creativity.

More realistic resourcing of Indigenous Art Code Limited would allow it to both better publicise its voluntary regulatory role, but also to provide additional advice to retailers, whether Indigenous-owned or otherwise. Of course providing sound advice does not guarantee it is accepted or implemented. The potential for collaboration and synergies between Indigenous Art Code Limited and regional art organisations like Arnhem, Northern and Kimberley Artists (ANKA) and Desert could be explored if the proposed review eventuates.

Draft Recommendation 10.2: Artists should be aware of and able to access legal support services.

I concur that the Australian government should ensure that legal support services are available to all artists, recognising that in many situations community-based art centres or regional organisations like ANKA or Desart will need to mediate on behalf of artists. One term of reference to the proposed review of the Indigenous Art Code Limited seeks to ask whether it is the best organisation to provide legal referral pathways. Doing this might pre-empt a canvassing of all options. While this recommendation seems to be focused on independent artists (that might lack access to the protective umbrella of a community-based arts organisation), from my experience these arts organisations themselves often need ready access to legal support services if contractual agreements with commercial dealers prove troublesome.

At one level it is surprising that legal dispute continues given the long-recognised need for transparent agreement making for the marketing and sale of Indigenous visual art. On the other hand, it is not surprising given the increasingly high turnover of staff in all but a handful of community-controlled art centres and at many commercial galleries. It is imperative that clear and transparent records of all dealings are maintained, although this is not necessarily standard practice in the art world.

Draft Recommendation 10.3: Australian Government funding should be evaluated to inform future arrangements

To some extent I am surprised by this draft recommendation if only because I would have thought it was within the scope of the current inquiry. Having said that, it might be timely to review existing Australian (and State and Territory) arts programs and funding to ensure that they remain fit for purpose and of sufficient scale for current circumstances. I say this with the following provisos.

First, it is important that program change is not implemented for the sake of change alone, the longevity of some programs like IVAIS might indicate long-term success and Indigenous arts community acceptance and appreciation rather than mere path dependency. It is important to acknowledge that the community-based art centre model is probably the most enduring program from the self-determination era. Over the past two decades many very effective programs and institutions from this era have been demeaned, dismantled, and defunded by the Australian government despite no evidence that what came before or after is any more effective.

Second, it is disappointing to see that the average arts income of the estimated 5800–7700 Indigenous artists who sold through art centres in 2019/20 was just \$2700. In 1987/88 this average income for an estimated 4383 artists was \$1500. Using the RBA Inflation Calculator to compare 1987/88 with 2019/20 indicates that \$1500 then would be worth \$3612 now. In other words, average incomes have declined despite sector growth. One reason for this might be that artists are making too much of a contribution to the running of their arts organisations, many have a pricing policy that sees half the wholesale or retail price of art sold retained to cover costs. So, while there is frequent reference to the support of governments to the running of arts centres, their viability and sustainability is first and foremost assured in many situations by the financial contributions made by artists themselves. While at face value this might seem a reasonable *modus operandi* it is important to note that many Indigenous artists who live in remote and very remote

Australia also live below the poverty line. It might be helpful to consider the broader circumstances that are seeing artists live in poverty including the nature of income support programs (like the Community Development Program) that have intentionally or unintentionally discouraged artists from participating in income earning arts practice.

Third, in any review of funding by governments to the sector it is imperative that positive externalities or spin-off benefits of the sector to artists and their families, communities, regions and the nation are carefully considered and if possible quantified. The Aboriginal and Torres Strait Islander visual arts and crafts sector generators multiplier benefits to domestic and inbound tourism, Australia's cultural standing globally and cultural diplomacy between First Nations peoples and others.

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.

Given the zeitgeist (or mood) of decision-making processes in the present moment, with an emphasis on co-design and co-governance this draft recommendation looks like a no brainer. But getting equitable Indigenous representative voice from artists given their geographic spread with the majority living remotely can be challenging. Over the years, representative arts organisations like the Aboriginal and Torres Strait Islander Arts Boards of the Australia Council have managed this challenge effectively.

It is imperative that the Australian government ensure that in any formal decision-making partnership its representative bureaucrats are suitably qualified with arts expertise. The de-specialisation of the bureaucracy has sometimes resulted in poor communications between representatives of Indigenous artists and representatives of the government especially when framed by wider policy agendas like 'normalisation' and 'Closing the Gap'.

To conclude, while I broadly concur with the four draft recommendations made by the Productivity Commission after its year-long investigation, I am somewhat surprised by their tentative (draft) nature; and the call for yet further review and consultation. Nevertheless, the 'draft' recommendations made appear sensible and worthy of support.