

20 May 2022

To Productivity Commission  
Aboriginal and Torres Strait Islander Visual Arts and Crafts  
Productivity Commission  
By email: [indigenous.arts@pc.gov.au](mailto:indigenous.arts@pc.gov.au)

Dear Administrative Officer

**Aboriginal and Torres Strait Islander Visual Arts and Crafts:  
Data re pro bono support provided to Aboriginal and Torres Strait Islander visual arts and crafts**

On behalf of King & Wood Mallesons, and the participants in our Community Impact practice, we are grateful for the opportunity to assist the Productivity Commission in relation to its study of Aboriginal and Torres Strait Islander visual arts and crafts.

As one of Australia and Asia's leading law firms, we take our responsibility to our clients and their communities seriously — reflected in our Community Impact strategy "[Standing Strong & Tall Together](#)" which guides our social impact practice. We are committed to creating a sustained, long-term and significant impact for communities.

A key focus of that strategy is our support for First Nations artists, communities and art organisations. Our approach is to work in close partnership with identified urban, regional and remote communities in recognition of the need for holistic, place-based responses and to maximise our impact. Regionally, we focus on Far North Queensland, Moree Plains and Western NSW and remotely, we focus on the Kimberley Regions, Arnhem Land, the Torres Strait and the APY/NPY Lands. We work closely with the Arts Law Centre of Australia through its Artists in the Black Project, Document Review Service, secondments, outreach programs to remote communities, and through ongoing pro bono support for artists.

We welcome the opportunity to provide some limited data which can quantify the economic cost of the themes identified in the Issues Paper.

Over the last 3 years, we have opened 58 separate pro bono matters for First Nations artists and art organisations that we consider relevant to the themes identified in the Issues Paper. Below, we have sought to quantify this activity.

Type of work	Advice to First Nations Art Centres	Advice to First Nations Artists	Outreach Trips	Secondments <sup>1</sup>	Total
Hours	719.5	799.9	290	3648.6	5458
Value	\$385,528.50	\$426,724.50	\$196,836.00	\$1,464,654.00	\$2,473,743.00

Our firm is proud of the assistance it provides pro bono in this space, and it will continue to provide that assistance. These numbers are, however, a stark reminder of the incredible cost and barrier to entry for First Nations artists and art organisations to assert their intellectual and cultural property rights in the market for Aboriginal and Torres Strait Islander arts and crafts. If this work was not provided on a pro bono basis, it is uncertain whether the persons receiving that advice would have had the opportunity and access to do so.

While many of these matters are general, we have recorded at least 530.7 hours (nominally \$289,234.50) on disputes, where we expect such matters to canvas the following broad themes of concern:

- outright copyright infringement by persons “ripping off” First Nations art without permission;
- misappropriation of Indigenous Cultural and Intellectual Property by persons and organisations, including improper use of cultural material by non-Indigenous persons;
- inequitable or unfair licensing structures, including those that do not reflect free, prior and informed consent, or do not comply with emerging best practice such as the Australia Council’s *Protocols For Using First Nations Cultural And Intellectual Property In The Arts* or the Indigenous Art Code; and
- the deception or unconscionable taking advantage of artists, particularly where their negotiating position is affected by structural disadvantages.

We expect other law firms, and organisations such as the Arts Law Centre of Australia, to also hold similar data which can assist to quantify the economic cost of enforcing fair and reasonable conduct in the Aboriginal and Torres Strait Islander arts and craft market.

If we can be of further assistance to the Commission, please do not hesitate to contact us.

Yours sincerely

**Dan Creasey | Director of Responsible Business  
King & Wood Mallesons**

**Luke Hawthorne | Senior Associate  
King & Wood Mallesons**

<sup>1</sup> Noting that secondees do not exclusively assist First Nations peoples.