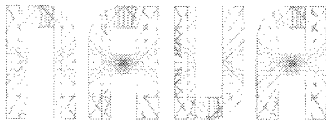


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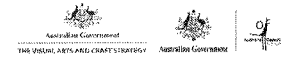
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Patrons: Pat Corrigan AM
Professor David Throsby



24 July 2008

Inquiry into Developing Indigenous Enterprises
The Secretary of the Committee
Email: atsia.reps@aph.gov.au

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Submission by the National Association for the Visual Arts (NAVA)

Background

The National Association for the Visual Arts (NAVA) appreciates the opportunity to provide a submission in respect of the Inquiry into Developing Indigenous Enterprises, July 2008.

NAVA is the peak body representing and advancing the professional interests of the Australian visual arts, craft and design sector, including Indigenous artists and their art support organisations. NAVA has about 3,000 individual and organisational members and 1,000 student affiliates. NAVA provides both advocacy on behalf of the sector and direct service to members through offering expert advice, representation, resources and a range of other services. Since its establishment in 1983, NAVA has been very influential in bringing about policy and legislative change to encourage the growth and development of the visual arts, craft and design sector, and increase professionalism within the industry. This has included both general issues that apply equally to all Australians, and work specifically focused on Indigenous issues.

NAVA's key policy work in relation to the Indigenous art industry in recent years has been the development of the *Indigenous Australian Art Commercial Code of Conduct*¹ and associated *Ethical Trade Strategies*² which are aimed at addressing shortfalls in the commercial and public environment in which visual art, craft and design is produced and marketed.

The Australian visual arts, craft and design industry is primarily comprised of Small to Medium Enterprises (SME). At the production point, this may mean individual artists operating as sole traders. Their cultural products and services are then supported by a range of ancillary businesses and services, most of which are also SMEs which may be either commercial or not for profit entities.

In 2006 NAVA made a submission to the *Inquiry into the Indigenous Art Industry* in which we noted the importance of members of Indigenous communities, currently part of the visual arts, craft and design industry, diversifying the enterprises they undertake. We contended that without this diversification, these enterprises are placed under unproductive pressure because in many cases within non-urban communities, they represent the only independent income source. This pressure makes it easier for unethical traders to engage in problematic commercial practices and undermines the long term sustainability of these visual arts, craft and design enterprises.

In that submission we referred to the address by Professor Howard Morphy, Director of the Centre for Cross-Cultural Research at the ANU At the 2006 symposium *Art, Money, Culture and Community*, held by Desart in Alice Springs. Prof Morphy noted the many successes of the Aboriginal art industry and also acknowledged that Aboriginal people need a range of successful business models which would extend the economic growth of their communities. He posed the question: How can the successes of the Aboriginal art industry be applied to achieve success in other Aboriginal business areas?

¹ Developed in association with ANKAAA and Desart. The national Indigenous visual arts industry regulation project is supported by the Australia Council, the Australian Government's arts funding and advisory body, through its Aboriginal and Torres Strait Islander Arts Board.

² *ibid*

Recommendation 1: that the Government should act on NAVA's previous recommendation to the Indigenous Art Inquiry, and should fund research into Art Centres as a business model which then can be applied to extend the commercial opportunities of Indigenous people living in remote areas.

We continue to advocate for this proposition. However, whilst acknowledging the importance of diversifying the business models for Indigenous enterprises, in this submission NAVA concentrates on both the visual arts, craft and design industry and the terms of reference as they relate to Indigenous art enterprises:

- whether current government, industry and community programs offering specific enterprise support programs and services to Indigenous enterprises are effective, particularly in building sustainable relationships with the broader business sector;
- identifying areas of Indigenous commercial advantage and strength.

It has been shown that visual arts, craft and design enterprises can provide a viable and valuable income source for some Aboriginal people and NAVA contends that more could be done by government to both strengthen existing enterprises and further build ancillary enterprises around the art and cultural nexus.

The following points elaborate NAVA's position on strategies which would further strengthen and extend Indigenous art and cultural enterprises.

Point 1. IP, TK & TCE

Intellectual Property (IP), Traditional Knowledge (TK) and Traditional Cultural Expression (TCE) applications provide significant income earning ability for Indigenous communities which could further be enhanced with adequate government measures.

*Recommendation 2: from the 'Ethical Trade Strategies', 2007³
...the Commonwealth (should) introduce appropriate legislation to provide for the protection of Indigenous Cultural and Intellectual Property rights, that the legislation be drafted to ensure prosecution of breaches will have a realistic chance of success, and that the Australian Customs Service be given an appropriate role in assisting the protection of these rights in relation to imported and exported goods.*

1.1 Traditional Knowledge, Traditional Cultural Expression and Sui Generis Legislation

The role of intellectual property (IP) systems in relation to traditional knowledge (TK), traditional cultural expressions (TCEs)⁴ and how to preserve, protect and equitably make use of them, is receiving increasing attention in a range of international policy discussions. The Australian government needs to be at the forefront of these discussions and adopt policies which will ensure that Indigenous people are able to create viable enterprises from the commercial applications of TK and TCEs and/or receive equitable returns from other parties' use or exploitation of them.

In some countries, sui generis legislation has been developed specifically to address the positive protection of TK and TCEs.

Recommendation 3: that the Government introduces sui generis legislation in Australia to protect Indigenous communities' collective intellectual property, traditional knowledge and traditional cultural expressions.⁵

1.2 Communal Moral Rights

Existing protection for intellectual property rights gives priority to individual ownership as opposed to a model of community ownership. NAVA advocates the introduction of legislation which recognises communal ownership and rights which are held in perpetuity, including the introduction of Indigenous

³ ETS Recommendation 25

⁴ TCEs cover literary & artistic works, performances of TCEs, designs, secret TCEs and Indigenous traditional names, words & symbols.

⁵ The Arts Law Centre of Australia's comments on TCEs for the WIPO IGC, 2007 further explore the issues around the protection of TCEs.

communal moral rights. NAVA is aware of government progress and modelling in this area but called into question the previously proposed ICMR Bill. NAVA believed that the model proposed was unworkable in practice and would not provide the protection being sought for community owned knowledge. NAVA recommended that more appropriate consultation be undertaken with a range of Indigenous communities to ensure that the process was one which took account of their collective rights and permission granting processes.

Recommendation 4: that the ICMR Bill be redrafted with significant Indigenous community input to provide better protection for Indigenous communities' moral rights.

1.3 Crown Copyright

Currently governments are exempted from the obligation to pay copyright fees. NAVA does not believe that there is any justification for this (see NAVA's inquiry submission re Crown Copyright)⁶.

Not only should Indigenous artists be paid by government bodies for the use of their IP, but also there is the obligation the artists may have to their communities in relation to the expression of traditional knowledge through their artworks.

Recommendation 5: that the Government amends copyright legislation so that the copyright in works produced by Indigenous artists under certain employment arrangements, remains with the artist.

Recommendation 6: that the Government funds the development of guidelines for determining under what circumstances it is appropriate for an employer to own the copyright in a work produced by an Indigenous artist. These guidelines should acknowledge restrictions on ownership of culturally important Indigenous material and knowledge.

Recommendation 7: that the Government should pay for its use of copyrighted material at standard commercial rates.

1.4 Changes to Designs Act

Currently the Designs Act offers limited protection for Indigenous Cultural and Intellectual Property in that:

- the focus of the design is to enable commercial interests to gain a competitive edge
- a limited period of protection is offered whereas traditional rights to Indigenous designs exist in perpetuity
- protection is afforded only to a registered owner, whereas Indigenous laws recognise communal owners.

Recommendation 8: that the Designs Act be amended to include provisions for the registration of Indigenous cultural designs (such as cross-hatching styles), and that the period of protection for such designs could be in perpetuity or the life of the Indigenous owner community.⁷

1.5 Labelling and Availability of Inauthentic Art/Craft Work

So that the market for genuine products from Indigenous enterprises is not undermined, legislation could be imposed through Customs requirements and other trade practices that restrict the claims that can be made about a product being 'Indigenous' or 'Aboriginal' and prevents the importation of inauthentic products.

Recommendation 9: that the Government implements legislation that bans the importation of products purporting to be Australian Indigenous artefacts, artworks and souvenirs and bans the use of the term 'Aboriginal style' or any other misleading term as a means to describe inauthentic local or imported 'Indigenous' artefacts, artworks or souvenirs.

1.6 Need for an Independent Analysis

In order to further inform good government, public and commercial policy, independent analysis is needed in relation to the commercialisation of Indigenous culture.

Recommendation 10: that an independent analysis of the opportunities and problems arising from the commercialisation of Indigenous culture needs to be conducted as per the recommendation in the Janke / Quiggin report "Indigenous cultural and intellectual property: the main issues for the Indigenous arts industry in 2006".

⁶ NAVA's submission re Crown Copyright to the Crown Copyright Law Review Committee April 2004

⁷ ETS Strategy 9.3

Point 2. Market development and access to government programs

2.1 Better Education of the Indigenous Art Industry and Market

Recommendation 13 from the Indigenous Art Inquiry states:

"The (Senate) committee recommends that DCITA in consultation with DEST, develop programmes to deliver education and training in the sector particularly in relation to:

- Governance and business planning and management
- Artists' rights and responsibilities
- Artistic development for artists; and
- Education of the market."⁸

Recommendation 11: that the Government accepts and acts upon Recommendation 13 from the Indigenous Art Inquiry (as stated above).

2.2 Better Access to Programs

Both the Indigenous Inquiry and NAVA's consultation for the development of the Indigenous Code indicated that some government programs were alienating their intended applicants due to the framing and wording of initiatives.

Recommendation 12: that the Government accepts and acts upon Recommendation 9 from the Indigenous Art Inquiry, that funding bodies for art enterprises should review their documentation and processes for Indigenous visual arts funding to ensure urban Indigenous artists are not discouraged by the language or objectives expressed for these programmes.⁹

2.3 Community Development Employment Projects (CDEP)

The CDEP program remains of great value in Indigenous communities for a number of reasons. Many Indigenous artworkers and artists have been employed under this scheme in very fruitful positions. They gain the experience of regular paid work and a sense that what they are producing or achieving is valued by others. The cessation of this scheme would have a very serious impact on the viability of some of the art and craft centres and the financial viability of the artists whose work is nurtured, validated and sold through these centres. Realistic and appropriate alternative employment opportunities need to be identified and government support needs to be offered to enable the continued development of jobs within strong sustainable arts businesses.

Recommendation 13: If the CDEP scheme is not to be continued, Art Centres and their arts workers and artists engaged in CDEP need to be provided with substantive information and assistance regarding the transition from CDEP into unsubsidised jobs or other income earning options.

2.4 International Market Development

Research into the role and impact of the international art market on Australia's Indigenous art production should be undertaken, including:

- regions from where art is sourced
- promotion of those regions
- sustainability of art production
- marketing and future demand
- education of the international market¹⁰
-

Recommendation 14: that State and Commonwealth government initiatives concerning the active development of overseas markets be undertaken.

⁸ Recommendation 13 from the Indigenous Art Inquiry

⁹ Recommendation 9 from the Indigenous Art Inquiry

¹⁰ adapted from ETS Recommendation 8

Point 3. Art industry changes needed

Adjustments in the way the visual arts, craft and design industry operates need to be made to ensure that Indigenous enterprises can be rewarded equitably, and can be encouraged to expand in innovative ways.

3.1 Inclusion of Indigenous Enterprises in Creative Industry Development

Support for Indigenous visual arts, craft and design enterprises needs to reflect the ever broadening scope of arts practice, and develop programs which encourage new products and new distribution and working methods.

Indigenous creative enterprises provide Australia with a unique competitive advantage in the global creative industries marketplace. The current creative industries programs need to acknowledge the work already being done by Indigenous enterprises and also ensure that Indigenous enterprises are comprehensively included in future cultural industries program development. This includes the outcomes of the government's Innovation Inquiry and the scope of the forthcoming Creative Industries Innovation Centre.

Recommendation 15: that the Government ensures the needs of Indigenous enterprises are equitably considered in determining the development of creative industries in Australia.

3.2 Art Industry Knowledge Transfer

In the short term the art industry needs to employ more Indigenous people in gallery sales, administration and other support roles to assist with skills and knowledge transference. This will better position Indigenous people to own and operate these enterprises.

Strategies to meet this aim include introducing higher education courses on running Indigenous art enterprises, including for example Art Centres; other forms of business management and governance programs within existing Indigenous enterprises; and the funding of strategically placed dedicated Indigenous staff positions within existing peak arts bodies and key service organisations.

Recommendation 16: that the Government works with the Australian art industry to determine priority actions to train and employ Indigenous people in visual art enterprises.

3.3 Indigenous Australian Art Commercial Code of Conduct (IAACCC)

The art industry is developing the Indigenous Australian Art Commercial Code of Conduct (IAACCC) which is intended to guide the Indigenous art industry in its commercial practice, covering issues relating to the production and sale of Indigenous artwork and uses of intellectual property. A primary motivator of the Code is to ensure ethical practices and Indigenous art enterprises receive a fair return on each commercial transaction, thereby leading to a strengthened and sustainable industry.

Recommendation 17: that the Code be endorsed by the Government and financially supported in its start up phase. This support needs to extend to the development and implementation of compliance and sanctions mechanisms associated with the Code, and a consumer and industry education campaign about the Code and its benefits.

3.4 Art and Tourism Nexus

As noted on the Indigenous Tourism Australia website: "Indigenous artists and art organisations have a co-dependent relationship with tourism. The chance to view and purchase indigenous art is a powerful drawcard for international visitors, and international visitors contribute significant expenditure to this industry."

A more formalised alliance between these two industry sectors could lead to increased enterprise opportunities for Indigenous small businesses as art producers and marketplace intermediaries to gain a more complete understanding of the potential of each industry and its market segments.

Recommendation 18: that mechanisms for ongoing discussion and exchange between representatives of the Indigenous tourism and Indigenous art industries be developed. This would include:

- *the recognition and support of existing initiatives within the tourism industry, such as 'Welcome to Country, Respecting Indigenous cultures for travellers in Australia', produced by Aboriginal Tourism Australia and the; and 'Members Code of Conduct for Aboriginal Tourism Australia'*

- *support for registered tourism operators under the 'Respecting Our Culture' registration system.*¹¹

Point 4. New enterprise opportunities from the IAACCC

To act as an effective voluntary code under ACCC guidelines, the Code requires systems of authentication of industry participants and art and craft produced. It also will require the adoption of administration and compliance mechanisms and a programme of industry and consumer education.

It is possible that meeting the requirements of the Code in relation to compliance, authenticity, education and interpretation, will create a number of new enterprise areas that would be best managed under Indigenous ownership and control.

Recommendation 19: as part of its support of the Code, that the Government works with the art industry on what enterprises could be initiated in association with the Code's implementation, and provides seed money to support those enterprises.

Point 5. Support of Indigenous Arts Centres¹²

Art Centres are organizations, owned and governed by Indigenous artists, with which the artist has an agreement for the sale and production of artwork.

There is no 'typical' Art Centre, however, each Art Centre is based on the principle of Indigenous self determination; focuses on the economic, social and cultural benefits to be accrued for Indigenous artists from Indigenous art; and has a unique role in the brokerage, or mediation, of Indigenous cultural products to the wider public.

5.1 Continued Support for Existing Centres to Meet their Market Potential

Under the 2008 federal budget the funding for Art Centres has been increased and terms altered. NAVA supports this increase and supports programs that assist, where appropriate, the transition to economic independence for art centres.¹³

NAVA also supports financial investments in these Centres that allow them to expand their production ranges and distribution methods.

NAVA notes the current short fall of Art Centres' capacity in terms of governance and skills transference and capacity building. It notes the need for mentoring and other educational initiatives to overcome these shortfalls. It suggests that ways of ensuring that Art Centres meet agreed industry standards be assessed and implemented, possibly including an Art Centre registration scheme. Any registration process would need to take into account the resources available to different Art Centres and reflect differing goals and business plans.

Industry standards for Art Centres may encompass issues such as:

- management and appropriate governance
- effective administration and procedures
- legal and ethical responsibilities
- resources, physical plant and equipment
- stock and quality control including archival procedures
- pricing, mark-up and payment policies and systems
- training provision in visual arts, craft and design business management
- developing the skills and careers of members of the Art Centre
- quality control practices such as achieving technical standards for the preparation of canvas and paint
- working with communities
- working with galleries, culture centres and other outlets, and
- dealing with buyers and agents.

¹¹ adapted from Strategy 1.6 from the ETS

¹² NAVA can supply the committee on request with a copy of the document IAACCC Guidelines: Art Centres which gives an outline of how Art Centre's are structured and operated.

¹³ ETS Recommendation 5

Recommendation 20: government should work with Art Centre peak bodies and independent Art Centres to determine the best ways to implement specific enterprise education and skills transference; and to canvas whether registration of Art Centres is a desirable option in terms of creating and maintaining industry standards of operation.

5.2 More Art Centres as an Enterprise Model

NAVA acknowledges that the Indigenous Art Centres Strategy and Action Plan report says that the following is already a federal government strategy: under Strategic Use of Support Organisations. It supports formation of similar organisations (to Desart and ANKAAA) in other states/regions.

The Art Centre model can be compared to a small business incubator. As such, the model could be applied in urban areas. It would be fair to say that, whilst not excluding Indigenous artists from their programs or the needs of Indigenous artists from the development of art resources, currently the networks of art infrastructure organisations do not have the resources to adequately meet the specific needs of Indigenous artists.

Recommendation 21: that the Government funds the establishment of Art Centres for Indigenous artists working in urban areas, similar to those in the regional and remote areas of Australia.

5.3 Indigenous Art Centres' Strategy and Action Plan

Over the years a number of well researched and thoughtful government inquiries and reports that impact on the Indigenous art, craft and design industry have been produced by government. There has been great frustration in the field that the recommendations from these initiatives have not been followed up with meaningful policy changes or an increase in funding capabilities for key delivery agencies. The *Indigenous Art Centres' Strategy and Action Plan* is one such document, but likewise, the current federal government has made little public commitment to the full range of recommendations from the 2006/07 Indigenous Art Inquiry. (Although we note that against a recommendation in the Inquiry, the government has committed to the introduction of a resale royalty in Australia, which NAVA enthusiastically endorses).

Recommendation 22: that the Government continues to implement the strategies outlined in the Indigenous Art Centres' Strategy and Action Plan in consultation with the art industry and to a timeframe acceptable to the industry.

Recommendation 23: with input from the Indigenous art industry, that the Government revisits the recommendations made in the Indigenous Art Inquiry to determine which recommendations remain priorities for the industry.

I would be happy to provide more information on this submission if required and to supply copies of any of the NAVA submissions referred to.

Yours sincerely



Tamara Winikoff
Executive Director

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Other documents of interest include:

- Altman, J.C., Hunter, B.H., Ward, S. and Wright, F. (2002) *Some Competition and Consumer Issues in the Indigenous Visual Arts Industry*, Centre for Aboriginal Economic Policy Research, ANU, Canberra.
- Altman, J. Prof., (2003) *Developing an Indigenous Art Strategy for the Northern Territory: issues paper for consultations with practitioners, organisational and bureaucratic stakeholders*. Centre for Aboriginal Economic Research, ANU, Canberra.
- Wright, F. (1999) *The Art and Craft Story Reports*. Desart and Aboriginal and Torres Strait Islander Commission.