



# **SUBMISSION**

**Parliamentary Inquiry**

**into**

**Australia's Indigenous Visual Arts**

**and**

**Craft Sector**

*This submission has been compiled on behalf of the  
**Queensland University of Technology**  
by Dr Andrew McNamara*

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# **QUT SUBMISSION**

## **Parliamentary Inquiry into Australia's Indigenous Visual Arts and Craft Sector**

Queensland has one of the most significant Indigenous visual arts and craft sectors in Australia with both a high profile urban indigenous arts community and a unique area of indigenous art typified by the communities of Cape York.

The Queensland University of Technology (QUT) has a strong commitment to reconciliation. As part of its reconciliation statement, QUT advanced a commitment to incorporating "Indigenous content and perspectives as appropriate into the University's curriculum and teaching practice." In addition, it has a designated area, the Oodgeroo Unit, dedicated to Aboriginal and Torres Strait Islander education, studies and research. QUT also has various Indigenous student initiatives and employment strategies.

The parliamentary inquiry notes the need "to fully examine the state of the [Indigenous visual arts sector] industry" as well as to "build a more sustainable Indigenous arts industry."

In examining the state of the Indigenous visual arts sector, QUT refers to the following possibilities in which future research will benefit the outcomes desired by the inquiry.

1. Term of reference, "c," refers to the "financial, cultural and artistic sustainability of the sector," but these might not always be congruous — particularly in this sector. Research and further analysis is required into how these three considerations — the financial, cultural and artistic — may coincide, but also how they differ. The overall terms of reference of the inquiry



focuses exclusively upon the financial dividends of the sector, but this may be too narrow to comprehend the entire sector if devoid of adequate understanding and examination of how financial, cultural and artistic may intersect as well as contradict one another in practice.

2. QUT is conducting a Creative Industries National Mapping project and has developed robust methodologies for measuring employment, earnings and business density, formation and failure rates within the segments of the creative industries. Further research opportunities arise from the funding of an indigenous extension of this mapping project. Such an extension would provide more substantial data on the state and capacity of the Indigenous visual arts sector. (At present, most figures are estimates). The funding would allow an extension to compare indigenous numbers to the data collected for all Australians across the creative industries—in particular, the 2006 data.
3. Opportunities also exist for more specific data evaluation of the sector by focused examination of the Census and ABR data. It is possible to cross-reference such data with Creative Industries mapping to obtain indigenous tables of occupation and income by area and to compare that with non-indigenous data. Opportunity is there for such research into the 2006 Census, which could also be compared with the 2001 Census.
4. A comparative evaluation of the capacity and critical issues of urban Indigenous artists and those living in remote communities. Are the concerns and issues facing both sets of artists similar or dramatically different? If they differ, are there equivalent policy settings that capture and account for these differences under the rubric, “the Indigenous visual arts sector”?

In regard to the term of reference, “e”—“opportunities for strategies and mechanisms that the sector could adopt to improve its practices, capacity and sustainability, including to deal with unscrupulous or unethical conduct.” If “unscrupulous or unethical conduct” is regarded as a major impediment to the sustainability of the Indigenous visual arts sector, then we offer the following suggestions:



1. Research needs to go into a comparative study of the merits and benefits of an arts centre located within an Indigenous community. Funding should be provided to conduct a comparative assessment of the level of “unscrupulous or unethical conduct” in a community without an arts centre, which acts as an advocate of the artists and the community, and the level of such conduct evident in communities without such a centre. In addition, the research project would probe what type of art centre arrangement works best in remote communities? It would also extend to investigate the commercial gallery-art centre nexus in order to gauge whether they are exempt of “unscrupulous or unethical conduct.” Overall, such research is needed in order to investigate the relative merits of different forms of indigenous arts and craft representation in order to propose best practice models.
2. Given Indigenous artists are subject to the most spectacular cases of escalated price mark-ups at auction, a remedy to unscrupulous dealing would be the implementation of re-sale royalties or rights as applied in France (*droit de suite*), but also throughout most of the creative industries. The right to re-sale royalties properly compensates for rogue trading and exploitation and also acts as an economic disincentive to such practices. They would operate like moral rights and would be “unassignable”— that is, not transferable, but also they would be (ideally) inheritable to an individual or to a community.
3. While the focus of this term of references is directed toward the industry, we submit that the industry practices can only be strengthened by the introduction of legislation designed to provide remedies with respect to fraudulent, unconscionable and other forms of conduct that disadvantages artists and their communities should be introduced in conjunction with state based cognate laws as appropriate. Such measures will only further strengthen the practices of the sectors of the industry that operate ethically, while isolating others who do not.
4. It is submitted that the general rules of contract and trade practices law are not well adapted to the specific problems relating to the sector. One suggestion is that a series of remedies and measures of a kind established by the *Protection of Movable Cultural Heritage Act* of 1986 could be used to assist individuals and communities seek the return of objects that have been

acquired against the terms of such legislation. Hopefully, such legislation would act as a strong disincentive rather than have to be used in practice.

5. The government could introduce measures to compensate individuals and communities for breaches of such a legislative initiative in the absence of a party against whom action may be brought.
6. At an international level, the *Protection of Movable Cultural Heritage Act 1986* may provide a model which will allow governmental level action to return works or objects purchased internationally in contravention of the legislation referred to in 3 and 4, to be used in exceptional cases to require the return of objects unlawfully required. This will also act as a powerful disincentive to prevent both on and off shore sales against the interests of artists and their communities. Existing customs, criminal and other international measures already exist to support the return, and could be linked to the 1970 UNESCO *Convention on the Means of Prohibiting the Illicit, Import, Export and Transfer of Ownership of Cultural Property*.

QUT has the capacity, research expertise and proven commitment to Indigenous cultural issues to conduct the necessary research endeavours that will result in better evaluation and knowledge of what is most helpful in building “a more sustainable Indigenous arts industry.” It also has law academics, who are specialists in the field relating to art and cultural issues, and can work alongside creative industries and art historical research specialists to conduct such research. Funding for such research projects is imperative to the successful outcomes envisaged by the inquiry. It will help both to develop better understanding of the sector and help to ensure the future sustainability of the sector.

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