



**NATIONAL ASSOCIATION  
FOR THE VISUAL ARTS LTD**

24 November 2006

Committee Secretary  
Senate Environment, Communications, Information Technology and the Arts Committee  
Department of the Senate  
[ecita.sen@aph.gov.au](mailto:ecita.sen@aph.gov.au)

## **INQUIRY INTO AUSTRALIA'S INDIGENOUS VISUAL ARTS AND CRAFT SECTOR**

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

The National Association for the Visual Arts (NAVA) appreciates the opportunity to provide a submission in respect of the Inquiry into Australia's Indigenous visual arts and craft sector, November 2006.

NAVA is the peak body representing and advancing the professional interests of the whole Australian visual arts and craft 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 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 and craft sector and to 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 applauds the Government's decision to investigate the concerns expressed by members of the sector. We strongly support the development and implementation of Australian law and policies to respect, strengthen and protect Indigenous communities' rights to cultural self determination and for Indigenous Peoples to be the custodians of their culture, their right to gain maximum social and financial benefit from their culture, and their right to have their diversity of culture and practice recognised and accommodated.

A snapshot of the economic value of the Indigenous art industry shows that:

- it contributes \$100 million annually to the economy.i
- most Aboriginal art is bought and sold in the Northern Territory, where tourists spend about \$50 million a year on Aboriginal art. 70% of that is traded in the malls, galleries and shops of Alice Springs.ii
- on the secondary market Aboriginal art is estimated to be worth \$12 million a year at fine art auctions.iii
- the value of the overall market has been estimated by some to be up to \$200 million when all forms of artwork are included. iv

NAVA expects that other submissions to the Inquiry will more fully outline evidence of economic value and hence this is not a major focus of the NAVA submission. However, we concur with the need expressed in the Janke/Quiggin report that calls for the need to do an

economic analysis and estimate of the value of the Indigenous arts industry to the overall Australian economy including future directions.<sup>1</sup>

The NAVA submission will address the following terms of reference:

- the current and likely future priority infrastructure needs of the sector;
- 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;
- opportunities for existing government support programs for Indigenous visual arts and crafts to be more effectively targeted to improve the sector's capacity and future sustainability; and
- future opportunities for further growth of Australia's Indigenous visual arts and craft sector, including through further developing international markets.

In developing this submission, NAVA has drawn on consultation with its members and constituents and the following documents:

- Draft *National Indigenous Art Commercial Code of Conduct (IACCC)* currently being researched and produced by NAVA, Desert and ANKAAA. To be published 2007. The IACCC aims to: promote practices which support Indigenous artists, their culture and communities; promote practices which ensure a fair economic return to Indigenous artists; encourage ethical practice throughout the Indigenous art industry in all dealings; provide a set of standards which will set a benchmark for the Industry, and contribute to the discussion of ethical trade strategies.
- *Indigenous Art Centres. Strategy and Action Plan*. Published by the Department of Communications, Information Technology and the Arts, Aboriginal and Torres Strait Islander Services, Australia Council for the Arts.
- *Indigenous cultural and intellectual property: the main issues for the Indigenous arts industry in 2006*. Published by the Australia Council, written and researched by Terri Janke and Robynne Quiggin, 2006.
- *Minding Culture. Case Studies on Intellectual Property and Traditional Cultural Expressions*. Published by the World Intellectual Property Organisation by Terri Janke, 2003.
- *National Aboriginal and Torres Strait Islander Cultural Industry Strategy*, ATSIIC 1997.
- *Taking Action, Gaining Trust. A National Indigenous Consumer Strategy. Action Plan 2005 – 2010*, 2005. Published by the Australian Competition and Consumer Commission.
- *Valuing Art, Respecting Culture: Protocols For Working With the Australian Indigenous Visual Arts and Craft Sector*. Published by NAVA, written and researched by Doreen Mellor with a legal section by Terri Janke. Published 2001.

## **General Comments**

NAVA's recommendations in this submission do not attempt to canvass the range of issues facing all Australian artists, Indigenous and non-Indigenous. NAVA dealt with many of these issues in its submission to the Inquiry into the Australian Visual Arts and Craft Sector. However, there are three areas worthy of special mention within the context of this Indigenous art industry inquiry.

### **GC1: It is recommended that the Government introduce Status of the Artist legislation for both Indigenous and non-Indigenous artists.**

This legislation would recognise artists and craft practitioners' professionalism and ensure adequate provision of industry entitlement mechanisms for:

- i) the protection of their rights through:
  - copyright
  - moral rights
  - freedom of expression and
  - resale royalties

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<sup>1</sup> Terri Janke, Robynne Quiggin, *Indigenous cultural and intellectual property: the main issues for the Indigenous arts industry*, 2006, p 50.

ii) ensuring their access to equivalent benefits to those enjoyed by other working people including in relation to:

- taxation
- superannuation
- social security
- insurance
- and other benefits, stipends and pensions.

**GC2: It is recommended that the Government remove the Sedition clause introduced a year ago as part of the Anti-Terrorism legislation.**

Echoing the general concern of the arts and media communities over artists' right to freedom of expression, particular mention is made here that, failing the complete removal of sedition laws, NAVA supports all the recommendations made in the July 2006 'Fighting Words' report of the Australian Law Reform Commission.

**GC3. It is recommended that the Government expands funding for the New Enterprise Initiative Scheme (NEIS), to provide arts focused specialist professional development training, including in small business practices, along the lines of the highly successful arts small business program that operated in Victoria pre-1997.**

This is an initiative which would benefit all artists including Indigenous artists and assist them to build their capacity to generate income from their arts skills, products and ideas.

## **Recommendations (grouped under terms of reference headings)**

### **1. The current and likely future priority infrastructure needs of the sector**

**1.1 Recommendation: that the Government introduces a range of advocate mechanisms to assist in negotiating between Indigenous artists and others.**

#### Mechanism 1. an industry advocate

Just as there are consumer advocates in many states and territories, an arts advocate would work on behalf of Indigenous artists. The advocate would be charged with the conciliation of disputes within the industry, for example between artists and a dealer, or between a gallery and an Art Centre.

#### Mechanism 2. Indigenous art advisory panel or National Indigenous Cultural Authority

There are instances when Indigenous protocol needs to be interpreted and decisions made as to what constitutes acceptable practice and/or issues which are culturally and commercially complex and need moderation. NAVA recommends the proposal made by Terri Janke in *Our Culture Our Future* for the establishment of a National Indigenous Cultural Authority. The functions of such an authority would be to:

- authorise uses of Indigenous cultural material
- provide general information on appropriate contractual arrangements
- act as a watchdog over inappropriate and unauthorised use of Indigenous cultural material
- undertake public education and awareness strategies
- supply information on existing legal system
- provide cultural information.<sup>2</sup>

**1.2 Recommendation: that the Government funds strategically placed dedicated Indigenous staff positions within existing peak arts bodies and key service organisations.**

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<sup>2</sup> *Our Culture Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights.* Terri Janke for Michael Frankel & Company, Solicitors, 1998.

This recommendation covers the need for funding for staff positions and adequate administration, travel and consultation costs. The recommendation correlates to that made in *Taking Action, Gaining Trust* in which it is recommended that adequate support be provided for non government organisations to advocate for Indigenous consumers.

If such a group of appropriate national peak bodies each had Indigenous staff, Indigenous interests could be appropriately represented within a broader agenda and targeted work would be undertaken on behalf of Indigenous artists and communities. In addition the Indigenous staff could benefit from working within an established structure, and draw on the experience of other staff. These Indigenous staff could form their own network to collaborate when appropriate and provide mutual support and cross referencing.

NAVA has been involved for many years in representing the interests of the Indigenous visual and craft sector. In all its advocacy, lobbying and service provision work, NAVA includes the issues of concern to this sector. However, its capacity and credibility is increased when the work is undertaken by an Indigenous person using his/her contacts and knowledge base. For example, having secured funding for an Indigenous Arts Officer from 1996 - 1998 NAVA was able to consolidate the National Indigenous Arts and Cultural Alliance (NIACA). In two successive years, NIACA successfully campaigned to maintain ATSIC's funding commitment to the arts and cultural section of its portfolio in the face of funding cuts. However, the loss of the Indigenous Arts Officer position meant that NAVA was unable to continue to provide secretariat services to this group and it disbanded.

### ***1.3 Recommendation: that the Government funds the establishment of a national Indigenous arts advocacy association/network***

Currently the Indigenous arts sector has no discrete body able to undertake research, develop policy, provide expert advice to key decision makers and represent the interests of the Indigenous arts sector to government and the community. While to some extent, this work is being shared around between several service organisations (NAVA, The Arts Law Centre of Australia and Viscopy), NAVA and other artform peak bodies do not have an equivalent Indigenous staff person to take up on behalf of our Indigenous constituents, many important issues and projects waiting to be addressed.

The National Indigenous Arts and Cultural Alliance (NIACA) provided a very good alternative national advocacy model for the whole Indigenous arts sector to the National Indigenous Arts Advocacy Association (NIAAA) now disbanded. NIACA was constituted of representatives of all Indigenous arts organisations and arts officers within non-Indigenous organisations. In our view, the viability and efficacy of such a structure would require enough funds to house and resource executive staff to provide secretariat services to the group and enact its decisions. Funds would also be needed to bring the group together for face to face discussions at least twice a year.

### ***1.4 Recommendation: that the Government fund research into Art Centres as a business model which then can be applied to extend the commercial opportunities of artists living in remote areas.***

At the recent symposium *Art, Money, Culture and Community*, held by Desart in Alice Springs, Professor Howard Morphy, Director of the Centre for Cross-Cultural Research at the ANU posed the question: How can the successes of the Aboriginal art industry be applied to achieve success in other Aboriginal business areas?

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 believes there are lessons that could be learned from research into Art Centre business models and investigating ways of applying those principles to other economic activities. A transcript of Professor Morphy's talk is available on the Desart website<sup>3</sup> or from the ANU.<sup>4</sup>

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<sup>3</sup> <http://www.desart.com.au/>

NAVA believes that working across the board to increase the economic viability of remote communities, through a number of business models, is one of the primary ways to lessen the commercial vulnerability of these artists.

***1.5 Recommendation: that the Government re-considers the issue of Resale Royalties by investigating the appropriateness and efficacy of voluntary schemes and consequently changing its decision not to enact legislation.***

Although legislation for Artists' Resale Royalties was rejected by the Commonwealth Government in 2006, NAVA continues to believe legislated Resale Royalties can be a viable industry mechanism to provide much needed economic return to artists. Further, the strong evidence presented in the past has shown that Indigenous artists in particular could benefit from such legislation.

Voluntary resale royalties have been proposed as an alternative to legislated Resale Royalties. The Indigenous Art Trade Association has brokered a model whereby Lawson Menzies and Deutscher Menzies auction houses voluntarily pay a percentage of the resale price into the Aboriginal Benefits Foundation, a company limited by guarantee and run by trustees. NAVA does not endorse this model for several reasons: it is patronising; the benefits from resale royalties should be returned to the creators (rather than to communities based on the trustees' decisions on how to distribute the funds); most auction houses and commercial galleries who work in the resale sector are not taking up this responsibility. However, we see this industry initiated scheme as further evidence that the issue of Resale Royalties needs to remain on the political agenda.

For all the reasons explained in the submissions NAVA and other expert bodies have provided to government, we continue to assert that Artists' Resale Royalties legislation is needed and justified in Australia.

***1.6 Recommendation: that the Australian Government and its people show greater commitment to the principles of the right to Indigenous self determination.***

Greater legislative protection is required for the right of Indigenous peoples to own and control Indigenous and Cultural Intellectual Property, including: the rights to maintain the secrecy of Indigenous knowledge and other cultural practices; the protection of Indigenous sites, including sacred sites; the control of the recording of cultural customs and expressions; and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of the culture.<sup>v</sup>

***1.7 Recommendation: that the Government funds adequate representation by Indigenous Australians at international forums relating to world wide Indigenous art, culture, intellectual property and traditional knowledge.***

It is important that Australian Indigenous people be represented at forums such as those organised by the United Nations and the World Intellectual Property Organisation, as well as forums organised by international Indigenous art communities. These forums promote networking and the sharing of issues, priorities and knowledge as well as working toward greater international recognition of the expectations and rights of Indigenous peoples. Participants can then better inform governments about ways to address issues facing Indigenous people and take this global overview back to their own communities who in turn can build cultural strategies for the future.

**2. Opportunities for strategies and mechanisms for adoption by the sector to improve its practices, capacity and sustainability, including to deal with unscrupulous or unethical conduct.**

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<sup>4</sup> [http://www.anu.edu.au/culture/staff/morphy\\_h.php](http://www.anu.edu.au/culture/staff/morphy_h.php)

There have been many exchanges between artists and buyers which are of questionable financial, ethical and cultural value. Examples include<sup>5</sup>:

- paying artists unfairly for their works or in alcohol or drugs, or for a price significantly less than the art work's true market or sales value
- enticing artists into arrangements where they work for days or weeks either in their community or elsewhere ( sometimes in sweat shops), often without a contract and where payment may be well below the art work's market value, or what an artist could expect from a gallery commission
- asking for or accepting payment for services in the form of an art work. Some reported examples have included a taxi fare, and accommodation; and
- targeting artists who are identified as successful and purchasing art works from them directly, undermining their relationship with the Art Centre of which they are a member, or the gallery that represents them, or both.

These practices may mean:

- the future value of the artist's work is undermined
- the artist is not getting a fair return on their artwork
- the artist may be working in unhealthy or unsafe conditions
- the fragile economy of the Art Centre is undermined, as well as the community in which the Art Centre may be returning the only form of non-welfare income
- the artist's career development is not being nurtured
- investment by galleries and reputable dealers in the artist's career is being devalued, and
- the artist is getting an immediate return for their work, but not the higher return they may acquire if work is sold through the process of representation and commissioning.

Sometimes the consequences of the behaviour may not be recognised by either party. Unfortunately on other occasions, these practices are used to extract maximum return to the buyer and/or dealer without any commitment to fair-trading and the sustainability of Indigenous art practice, or the Indigenous art industry.

There are occasions where the artist sells their work in this way because of the artist's desire for immediate cash and goods, family pressure, and/or because of undue pressure from the buyer or dealer concerned.

The practice is underpinned by:

- an artist's vulnerability in terms of understanding the value of their work within the art industry, and the processes which lead over time to successful return and a sustainable career as an artist. This vulnerability is exacerbated where the artist's language is other than English, and the cultural exchange is one sided.
- the lack of appreciation by some buyers of the value of the artist's work; a lack of understanding about how value is built in the visual art industry; and a lack of understanding of exchanges that contribute to the sustainability of Indigenous art and culture.

***2.1 Recommendation: that the Government endorse the National Indigenous Art Commercial Code of Conduct (IACCC), and encourage (and mandate parts of) its adoption and application by industry participants.***

In 2006 NAVA is working in partnership with Desert and ANKAAA to develop a National Indigenous Art Commercial Code of Conduct (IACCC). The Code will provide a set of practical and ethical guidelines for the conduct of business in and with the Indigenous art industry. The Code will cover artists, Art Centres, agents and dealers, professional associations and organisations within the industry, galleries and retail outlets, as well as associated organisations such as those within the tourism industry. Adoption of the Code as a public statement by an entity could be an indication of its commitment to ethical practice.

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<sup>5</sup> This outline is an extract from the draft National Indigenous Art Commercial Code of Conduct being developed by the consultant Gientzotis Consulting for NAVA.

The force of this Code would be greatly enhanced if it was endorsed by the Commonwealth Government and if certain aspects were legally mandated. These aspects will become evident when the work on the Code is completed.

**2.2 Recommendation: that the Government should work with industry organisations and training providers to co-ordinate, and where appropriate, fund the development and delivery of extended forms of education and training to address current instances of unfair exchange between artists and markets including education on market value, copyright, Indigenous moral rights and appropriation.**

This education should be provided by both formal and informal education providers and by both art and non-art specific entities.

The following means are suggested in the IACCC:

- posters which can be hung in Art Centres or other appropriate places in communities, with additional written explanations and educational resources for artists and their families. These will need to be customised in language. Art Centre and gallery policies should comply where these relationships are in place
- incorporation into accredited programmes of competency standards or performance criteria concerned with understanding value and sales
- reviews of National Competency Standards and learning resources, to ensure the processes of Indigenous art sales and issues are incorporated appropriately
- discussion and exploration with Indigenous artists regarding the value of artwork within Indigenous culture and how this relates to value within the art industry
- professional development opportunities for galleries, agents and dealers discussing principles of ethical practice and their application.

**2.3 Recommendation: that the Government should facilitate discussion regarding the Registration of Art Centres, and fund the adoption of best practice standards. These standards should include a code of conduct for Art Centre staff.**

The registration of Art Centres would involve the audit of each Art Centre against a set of standards of good Art Centre practice. ANKAAA and Desart intend to jointly develop a best practice manual for Art Centres encompassing such standards set at levels appropriate to the context and resources of various Art Centre models.

Standards may encompass issues such as:

- Art Centre 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 art and craft technique, 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.<sup>6</sup>

Any registration process would need to take into account the resources available to different Art Centres and reflect differing goals and business plans.<sup>7</sup>

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<sup>6</sup> See: Mercer, C., *Creative Country. Review of the ATSIC Arts and Crafts Industry Support Strategy (ACISS) Culture section, Culture and Legal Aid and Family Policy Branch, ATSIC 1997* and Wright F., *The Art and Craft Story Volume One Report* Desart and the Aboriginal and Torres Strait Islander Commission 1999

<sup>7</sup> Extract from the draft National Indigenous Art Commercial Code of Conduct being developed by the consultant Gientzotis Consulting for NAVA.

**2.4 Recommendation: that galleries and retailers should be encouraged to become members of recognised art and tourism industry professional organisations and the Government should work with those organisations to investigate the benefits of, and processes involved in, registration or licensing of galleries and retail outlets which deal in Indigenous art and craft.**

Professional organisations include:

- Australian Commercial Galleries Association
- Australian Indigenous Art Trade Association
- National Association for the Visual Arts
- Desart
- ANKAAA
- Indigenous Tourism Australia.

**2.5 Recommendation: that the Government furthers investigation into the establishment of mechanisms that assist buyer confidence in artwork authenticity, (including re-examining the issue of an Authenticity Trade Mark), which leads to the adoption by the industry of agreed mechanisms.**

This recommendation correlates with that made in *Taking Action, Gaining Trust* which noted that instances of “misleading and deceptive conduct, and false representation of Indigenous art and craft at the point of sale”<sup>8</sup> does occur. *Taking Action* recommends that “education campaigns targeted to consumers, communities, artists dealers, retail outlets, auction houses, galleries and manufacturers to alert them to their protections and obligations under the law” need to be undertaken.

In addition, NAVA recommends that models for authenticity branding need to be re-examined. Many Art Centres, galleries, dealers, auction houses and retail outlets have their own brand or trade mark and/ or an authentication processes. A Certificate of Authenticity is generally recommended to establish the provenance and authenticity of the work.

In the past a number of authentication systems have been proposed, including the Label of Authenticity administered by the National Indigenous Arts Advocacy Association. These initiatives however have not succeeded in creating a sustainable national Indigenous art database and/or trademark of authenticity. Some of the reasons put forward for this have been:

- the stretching of resources during the development and start up phase of the Label of Authenticity leading to the collapse of the system;
- the problems a national system has in incorporating local Indigenous roles as custodians of cultural and intellectual property; and
- the concern of successful authentication systems at a local level to maintain the profile and integrity of their product.

It has also been argued that certification systems are open to fraudulent practice. However, as the establishment of authenticity and provenance are key requirements of the art industry generally, limited instances should not determine the whole. The aim is to reduce the instances of fraud and misrepresentation. For this reason, the demand for a uniform standard of documentation of artworks and clear authentication processes remains.<sup>9</sup>

**2.6 Recommendation: that the Government implements legislation that bans the import of products purporting to be Australian Indigenous artefacts, artworks and souvenirs**

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<sup>8</sup> Taking Action, Gaining Trust, p16

<sup>9</sup> See Terri Janke and Company Pty Ltd *Code of Practice for galleries and retailers of Indigenous Art* written for the City of Melbourne, 4 May 2006; and *Submission by the Australian Indigenous Art Trade Association to the Commonwealth Minister for the Arts, Senator the Hon Rod Kemp* May 2006; and Wright F., *The Art and Craft Story Volume One Report* Desart and the Aboriginal and Torres Strait Islander Commission 1999



**and bans the use of the term 'Aboriginal style' as a means to describe inauthentic local or imported 'Indigenous' artefacts, artworks or souvenirs.**

It is obvious that the trade in products manufactured overseas or even locally which are intended to appear to have been designed and/or made by Indigenous artists and craft practitioners is both deceptive and is leaching income away from these artists. This recommendation reinforces other options for proving authenticity and maintaining buyer confidence. The legislation could be imposed through Customs requirements and other trade practices that restrict the claims that can be made about a product and prevents inauthentic products undercutting the market for genuine Australian Indigenous products.

**2.7 Recommendation: that the review of land permits being conducted by the Office of Indigenous Policy Coordination and in response to the discussion paper "Access to Aboriginal Land under the Northern Territory Aboriginal Land Rights Act – Time for Change?" must be informed by the submissions to this Indigenous Art Inquiry. Land Permits legislation should not undermine the needs of the Indigenous art industry.**

There is concern that weakening the land permits system will extend the ability of unscrupulous art dealers to gain access to Indigenous communities and their artists for exploitative purposes.

The draft IACCC says:

"When inappropriate practices do occur, communities and artists need to be able to enforce the conditions of entry permits, including the removal of an individual without an entry permit or in breach of the permits' conditions.

Many Indigenous artists live on traditional land, and many Art Centres are on Indigenous land in remote areas. Formal permission must be gained from the Land Council or Trust, or the Community Council concerned, if a visit to designated Aboriginal lands or to the outer islands of the Torres Strait is planned.

There are times when a community may not be comfortable with a visitor's presence. This can be due to cultural or ceremonial activity. It can also be due to the visitors' behaviour. Communities may ask a visitor to leave, if they feel the visitor is behaving inappropriately; including buying artworks the 'wrong way' from artists, handing out brushes and canvasses away from the Art Centre, refusing to enter into an appropriate agreement with the community and their Art Centre, or placing artists under duress. The lack of enforcement of permit requirements on these occasions encourages some to behave with impunity.

It is important that permits can be appropriately enforced by communities and that there are responsive and effective procedures to escort someone out of the community when they do not hold a permit, or are perceived to be in breach of their permit conditions."<sup>10</sup>

**3. Opportunities for existing government support programs for Indigenous visual arts and crafts to be more effectively targeted to improve the sector's capacity and future sustainability.**

**3.1 Recommendation: that the Government extends moral rights legislation to acknowledge Indigenous Communal Moral Rights.**

NAVA has previously made a submission on this issue in response to the *Draft Copyright Amendment (Indigenous Communal Moral Rights) Bill (2003)* which was sent to The Hon Daryl Williams MP, Minister for Communications, Information Technology and the Arts, The Hon Phillip Ruddock MP, Attorney General and Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs.

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<sup>10</sup> Extract from the draft National Indigenous Art Commercial Code of Conduct.

To summarise NAVA's position as made in that response: while we strongly urged the Government to implement legislation relating to Indigenous Communal Moral Rights, we had a number of serious reservations about the draft Bill, believing that it did not provide appropriate or practical protection. In particular we recommended that consultation should be undertaken with a suitable cross section of Indigenous artists and representatives of communities. Though we understand that revised legislation has been prepared, we have not been given the opportunity to provide a response. We understand that the appropriate levels of consultation which we recommended have not been undertaken.

**3.2 Recommendation: that the Government amends the Designs Act so that it offers greater protection for Indigenous Cultural and Intellectual Property.**

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.

It is recommended 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.

**3.3 Recommendation: that the government amends copyright legislation so that the copyright in works produced by Indigenous artists under certain employment arrangements remains with the artist,**

In addition, the government should fund the development of guidelines for determining under what circumstances it is appropriate for an employer to own the copyright to a work produced by an Indigenous artist. These guidelines should acknowledge restrictions on ownership of culturally important material and knowledge.

An example is that Indigenous artists employed under CDEP schemes should retain copyright in the works they produce.

**3.4 Recommendation: that training be incorporated into educational programmes for Indigenous artists to assist them to understand their rights (Including those elaborated in the Indigenous Art Commercial Code of Conduct)**

**3.5 Recommendation: that the Government investigates the viability of increasing the terms of access to and income thresholds for benefit support to Indigenous artists living in remote communities.**

The current cut off points for benefits do not take into account the number of dependants being supported by the income earner. This is a disincentive for Indigenous artists who are earning a return on their art practice, but may be sharing this income with their extended family or the larger community.

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

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 Organizations. It supports formation of similar organisations (to Desert 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. In a previous recommendation NAVA has noted the need to better resource these non-Indigenous organisations so that they can undertake specific programs and activities for Indigenous artists. This recommendation however also acknowledges the principle of self determination and therefore the opportunity for artists to have Indigenous organisations which represent the Indigenous art industry.

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

**3.8 Recommendation: that the Government revisit the recommendations from the National Aboriginal and Torres Strait Islander Cultural Industry Strategy.**

In the mid 1990s this detailed study was commissioned by ATSIC but the funds were never allocated for its recommendations to be implemented. Many of these recommendations would still apply today. It therefore provides a useful reference document for this Inquiry.

#### **4. Future opportunities for further growth of Australia's Indigenous visual arts and craft sector, including through further developing international markets.**

NAVA believes that the international market for Australian Indigenous cultural products and services could be expanded. It is our expectation that other sectors of the industry will be making recommendations to the Inquiry on ways to achieve this. The following recommendations relate to the need to carefully manage the ways in which this expansion occurs so that Indigenous culture is not undermined by international commercial interests and to ensure that the impacts of tourism are managed and fair returns are made from tourism (domestic and international) to Indigenous creators.

**4.1 Recommendation: 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.**

**4.2 Recommendation: the Indigenous art industry and the Australian tourism industry need to work to create better informed international buyers of Australian Indigenous cultural product; and the two industries need to collaborate to develop appropriate protocols and mutually beneficial codes of conduct.**

For more information on this submission contact:  
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NAVA acknowledges the assistance provided by the Australian Government through the Australia Council, its arts funding and advisory body, and by the Visual Arts and Craft Strategy, an initiative of the Australian, State and Territory Governments.

<sup>i</sup> Centre for Leisure Management Research Annual Report, Centre for Leisure Management Research, Deakin University, [http://www.deakin.edu.au/buslaw/bowater/clmr/annual\\_report/clmr\\_ar\\_04.pdf](http://www.deakin.edu.au/buslaw/bowater/clmr/annual_report/clmr_ar_04.pdf)

<sup>ii</sup> ABC Radio National – Background Briefing 25 September 2005 *Black Art Goldrush* <http://www.abc.net.au/rn/talks/bbing/stories/s1465615.htm>

<sup>iii</sup> Cosic, M *Dispossession is sorry business* The Australian 26 May 2006

<sup>iv</sup> *ibid.*

<sup>v</sup> See Indigenous Law Centre. 1999, *Our Culture Our Future: A report on Australian Indigenous Cultural and Intellectual Property Rights* Australian Indigenous Law Reporter 51; 4(4) p.115