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**Australian Government response to the
Senate Standing Committee on Environment, Communications,
Information Technology and the Arts Committee Report:**

*Indigenous Art – Securing the Future
Australia’s Indigenous visual arts and craft sector*

August 2008



Australian Government response to the Senate Environment, Communications, Information Technology and the Arts Committee Report:

Indigenous Art – Securing the Future

This is the Australian Government's response to the Senate Standing Committee on Environment, Communications, Information Technology and the Arts Inquiry into the Indigenous visual arts and craft sector, *Indigenous Arts – Securing the Future*, as tabled on 20 June 2007.

The Government acknowledges the importance of the committee's research into the Indigenous visual arts sector, and the value of its findings in contributing to the growth and stability of the sector into the future. The report highlights the economic, social and cultural benefits of the Indigenous visual arts sector to local communities and its wider impact on other sectors and the nation generally. As stated in the report, these benefits can be reinforced and developed through a coordinated whole of government response to the recommendations.

The Government recognises the success of the Indigenous visual arts sector including the creation of an internationally acclaimed art movement, representing a dynamic living culture that helps define Australia's identity. This sector affords economic opportunities for Indigenous artists and communities while playing a fundamental role in building a dialogue between Indigenous and other Australians in the reconciliation process. The Government also acknowledges that the Indigenous visual arts sector faces a number of challenges.

The Government considers it has an important ongoing role in the building of a strong and sustainable Indigenous visual arts sector which is reflected in this response to the committee's recommendations.

Australian Government response to *Indigenous Art – Securing the Future*

Recommendation	Position	Comment
<p>Recommendation 1</p> <p>The committee recommends that [the] Australian Customs Service [Customs] and DCITA [the Department of Communications, Information Technology and the Arts] initiate a review of the feasibility of Customs further classifying exported art into Indigenous and non-Indigenous categories, to assist future market analysis.</p>	<p>Agreed in principle.</p>	<ul style="list-style-type: none"> ▪ The Australian Bureau of Statistics (ABS) administers the Australian Harmonised Export Commodity Classification (AHECC) Guide. In general terms, all export cargo above \$A2,000 is required to be declared to Customs and must be classified using the correct AHECC code. ▪ The ABS will consider the incorporation of classification codes which allow separate identification of ‘Australian Indigenous art’ from other art exports. This will occur in the context of the review of AHECC codes which is to take place in 2009. ▪ Subject to the agreement of the ABS and the creation of the new codes, Customs will commence implementation of the recommendation in accordance with their role in collecting data on current export cargo under categories identified in the AHECC Guide.
<p>Recommendation 2</p> <p>The committee recommends that, to increase the skills base of art centre managers and prospective managers, DCITA, in conjunction with DEST [the Department of Education, Science and Training], initiate discussions with selected tertiary institutions on the feasibility of introducing courses on art centre management and cross-cultural issues.</p>	<p>Agreed.</p>	<ul style="list-style-type: none"> ▪ The Government recognises that there are already a number of tertiary courses aimed at preparing individuals for work in art centres. ▪ The Department of Education, Employment and Workplace Relations (DEEWR) has initiated discussions with selected tertiary institutions about the feasibility of working in partnership to ensure flexible opportunities for training are available to current prospective art centre managers and employees. ▪ DEEWR will consult with the Department of the Environment, Water, Heritage and the Arts (DEWHA) as appropriate in relation to those discussions. ▪ DEEWR will continue to ensure that, for local people, engagement with art centres supports the development of work skills which are linked to opportunities of employment in the real jobs that high-functioning art centres can provide.

Recommendation	Position	Comment
<p>Recommendation 3</p> <p>The committee recommends that DCITA, in co-operation with the Office of Indigenous Policy Coordination [OIPC], ensure that art centres in the Northern Territory are aware of opportunities to apply for funding from the Aboriginal Benefits Account [ABA], and that ANKAAA and Desart assist art centres to apply for funding from this source. The committee encourages the ABA Advisory Committee to support applications from art centres, noting the competing demands on the ABA from different types of funding requests.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and DEWHA have discussed opportunities with peak industry organisations, including Desart (Association of Central Australian Aboriginal Art and Craft Centres) and ANKAAA (Association of Northern, Kimberley and Arnhem Aboriginal Artists), to ensure their awareness of the ABA as a funding avenue. ▪ Applications for use of ABA funds are subject to an assessment process prior to a decision by the Minister for Families, Housing, Community Services and Indigenous Affairs.
<p>Recommendation 4</p> <p>The committee recommends that the Commonwealth establish a new infrastructure fund to assist Indigenous visual arts and craft; that this fund complement existing NACIS [National Arts and Craft Industry Support] program funding; that this infrastructure fund be for a sum in the order of \$25 million, made available over a period of five years; and that the fund be administered by DCITA.</p>	<p>Subject to consideration in a future Budget process.</p>	
<p>Recommendation 5</p> <p>The committee supports the roles of DEWR [the Department of Employment and Workplace Relations] and Indigenous Business Australia [IBA] programs in assisting where appropriate the transition to economic independence for art centres, and recommends that these initiatives be further promoted by DEWR and IBA and utilised by art centres.</p>	<p>Agreed in principle.</p>	<ul style="list-style-type: none"> ▪ DEWR and IBA will utilise and promote current programs to assist where appropriate to transition art centres to economic independence. This will include encouraging commercial art centre operations and developing employment outcomes, and working with other agencies where appropriate. It may also necessitate a review of current programs to fit with this purpose. The Government also recognises that tourism is a vehicle to assist in commercialising art centre operations.
<p>Recommendation 6</p> <p>The committee recommends that the Commonwealth further expand funding under the existing NACIS scheme and consider revising its guidelines to confine its use to non-infrastructure projects.</p>	<p>Subject to consideration in a future Budget process.</p>	<ul style="list-style-type: none"> ▪ The Australian Government has committed to increase funding for the NACIS program through an additional \$7.6 million over four years. ▪ The Government agrees to consider revising NACIS guidelines to confine support to non-infrastructure projects, subject to Budget consideration of the proposal under Recommendation 4.

Recommendation	Position	Comment
<p>Recommendation 7</p> <p>The committee recommends that the Commonwealth consult with stakeholders in the industry, particularly Desert and ANKAAA, on reforms to NACIS funding criteria, so that funding decisions are guided in part by the aim of ensuring operation of art centres in accordance with best practice principles. These standards may include (but not be confined to):</p> <ul style="list-style-type: none"> • staffing requirements that meet the operational needs of art centres, and ensure flexibility to accommodate any particular requirements of such centres; • governance and reporting systems; and • training commitments, including financial, management and art education components. 	<p>Agreed.</p>	<ul style="list-style-type: none"> ▪ The Government, through DEWHA, agrees to consult with stakeholders on possible reforms to NACIS funding criteria. ▪ The Government notes that the Office of Evaluation and Audit (Indigenous Programs) is evaluating the NACIS program. The outcomes of the evaluation may be relevant in relation to this recommendation and may have implications for other recommendations.
<p>Recommendation 8</p> <p>The committee recommends that, in light of the special circumstances facing Indigenous artists in the Alice Springs area, a proposal be developed, including a funding bid, for an art centre in Alice Springs that will cater for artists visiting the town from surrounding settlements.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Government considers the first step in addressing these issues is to undertake a scoping study. ▪ The Government notes the committee's view that Alice Springs is widely regarded as an area where significant issues exist regarding the fair treatment of Indigenous artists. ▪ The Government notes the committee's comments that the establishment of an arts facility in Alice Springs would have significant resource implications and that considerable negotiation and planning would be required to ensure its effectiveness.
<p>Recommendation 9</p> <p>The committee recommends that DCITA, the Australia Council, and state and territory funding bodies review their documentation and processes for Indigenous visual arts funding to ensure urban Indigenous artists will not be discouraged by the language or objectives expressed for those programs.</p>	<p>Agreed.</p>	<ul style="list-style-type: none"> ▪ DEWHA and the Australia Council are reviewing their documentation and processes across relevant programs to progress this recommendation. ▪ DEWHA, with the Australia Council, will raise the issue within the context of the Cultural Ministers Council.

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<p>Recommendation 10</p> <p>The committee recommends that DCITA implement triennial operational funding for art centres as an option for projects seeking support under the NACIS program.</p>	<p>Agreed.</p>	<ul style="list-style-type: none"> ▪ The Government has committed to introduce three yearly operational funding to improve financial certainty.
<p>Recommendation 11</p> <p>The committee recommends that the Commonwealth pursue the conversion of CDEP-funded positions in art centres into properly funded jobs, taking an approach similar to the 2007-08 Budget initiative in other portfolio areas; and that this initiative be independent of future NACIS program funding.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Government will reform the CDEP (Community Development Employment Projects) program as part of its broader Indigenous Economic Development Strategy and supports the ongoing conversion of CDEP positions into real jobs where possible, including those in the arts industry.
<p>Recommendation 12</p> <p>The committee recommends that future editions of the Indigenous Visual Arts and Craft Resource Directory only include entries for entities that maintain appropriate compliance with the Indigenous Art Commercial Code of Conduct.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Government notes that the Directory has not been regularly produced since its first publication in 1987. ▪ Should a new edition be considered, and an appropriate code of conduct be in operation, then the Government will consider the feasibility of limiting entries to code compliant organisations at that time.
<p>Recommendation 13</p> <p>The committee recommends that DCITA, in consultation with DEST, develop programs to deliver education and training in the sector particularly in relation to:</p> <ul style="list-style-type: none"> • governance and business planning and management; • artists' rights and responsibilities; • artistic development for artists; and • education of the market. 	<p>Agreed in principle.</p>	<ul style="list-style-type: none"> ▪ The Government recognises that this recommendation covers a range of portfolio areas and requires a whole of government engagement that recognises that states and territories are responsible for the delivery of education and training. ▪ DEWHA and DEEWR, in consultation with other relevant agencies, are examining appropriate ways to address the recommendation. This includes looking at building on existing initiatives and scope for establishing new approaches to education and training. The resources required to develop any new proposals would be subject to a future Budget process.
<p>Recommendation 14</p> <p>The committee recommends that, subject to the acceptance of its recommendation in chapter 4 for an expansion of NACIS scheme funding, the Commonwealth review the relevant funding guidelines to ensure governance and business management training activities are supported.</p>	<p>Agreed.</p>	<ul style="list-style-type: none"> ▪ The Government notes that these activities are already eligible for support under the current program guidelines, insofar as such activities contribute to the development and sustainability of the industry. ▪ As part of its regular review of the program's guidelines, DEWHA will continue to ensure that the eligibility of these activities is clear.

Recommendation	Position	Comment
<p>Recommendation 15</p> <p>The committee recommends that, as a matter of priority, the ACCC [Australian Competition and Consumer Commission] be funded to increase its scrutiny of the Indigenous art industry, including conducting educational programs for consumers as well as investigation activities, with a goal of increasing successful prosecutions of illegal practices in the industry.</p>	<p>Not agreed.</p>	<ul style="list-style-type: none"> ▪ The Government considers the ACCC to be appropriately resourced to enforce the provisions of the <i>Trade Practices Act 1974 (TPA)</i>, including engaging in education campaigns as appropriate. The decision for the ACCC to pursue complaints is not constrained by resource considerations. ▪ As an independent statutory authority the ACCC sets its own enforcement priorities and can direct those resources to Indigenous art if appropriate. ▪ Under the current funding arrangements, the ACCC conducts a range of education and information activities for Indigenous communities as part of its disadvantaged and vulnerable consumer program and is a signatory to the National Indigenous Consumer Strategy. ▪ While the ACCC's education activities are focused on general compliance initiatives and education campaigns to raise awareness of the ACCC and its functions, this does not preclude the ACCC from pursuing specific efforts targeted at this sector. In representations to the Inquiry, the ACCC stated its willingness to investigate any conduct that would constitute a potential breach of the TPA. Investigative work is currently underway into a number of matters raised during the Senate Inquiry pertaining to complaints about conduct in this sector.
<p>Recommendation 16</p> <p>The committee recommends that DCITA analyse the failure of the NIAAA [National Indigenous Arts Advocacy Association] label of authenticity, and examine the reviews of labelling schemes in Canada and New Zealand. The Department should then, in consultation with key stakeholders, commence planning for a new scheme.</p>	<p>Agreed in part.</p>	<ul style="list-style-type: none"> ▪ The Government agrees to undertake further work to examine: <ul style="list-style-type: none"> - the operation of international schemes; and - current and former schemes in Australia. ▪ Subject to the outcomes of these processes, the Government will consider options to address issues around authenticity and labelling schemes in the future.
<p>Recommendation 17</p> <p>The committee recommends that [an] Indigenous Art Commercial Code of Conduct be completed as soon as possible.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Government supports the development of an industry wide code of conduct to enhance the industry's sustainability and to protect artists from unscrupulous conduct. ▪ The Government notes the recommendation and the work to progress the effective development of the Code. The Government also notes that the ACCC has been consulted by the Indigenous Art Commercial Code of Conduct reference group (see response to Recommendation 19). ▪ The Government looks forward to the completion of the Code.

Recommendation	Position	Comment
<p>Recommendation 18</p> <p>The committee recommends that, once completed, all Commonwealth, state and territory agencies apply the Indigenous Art Commercial Code of Conduct where appropriate, including when purchasing Indigenous art.</p>	Noted.	<ul style="list-style-type: none"> ▪ The Government notes the recommendation and, subject to an appropriate code of conduct being in operation, will raise the recommendation in appropriate Commonwealth and state fora.
<p>Recommendation 19</p> <p>The committee recommends that the NAVA [National Association of the Visual Arts] Reference Group and other stakeholders include input from experts on industry codes of practice, particularly the ACCC, during and after the preparation of the Indigenous Art Commercial Code of Conduct.</p>	Noted.	<ul style="list-style-type: none"> ▪ The Government notes the recommendation. The Government considers that effective voluntary industry codes potentially deliver increased protection to consumers and other stakeholders as well as reduced regulatory burdens for business. ▪ The Code of Conduct has benefited from input from a wide a range of stakeholders, including the ACCC, which has significant experience in the application of codes of conduct. ▪ The Government notes that the ACCC has consulted with the Australia Council, NAVA and key industry bodies ANKAAA and Desart in relation to the draft Indigenous Art Commercial Code of Conduct and supports this collaboration. ▪ The ACCC has provided advice to the Code of Conduct Reference Group on the major issues to be considered in the development of an industry code and is providing further assistance to the Reference Group to ensure the effectiveness of the Code in achieving compliance with the TPA.
<p>Recommendation 20</p> <p>The committee recommends that, once completed, all stakeholders in the industry examine, disseminate and adopt where relevant the Indigenous Art Commercial Code of Conduct.</p>	Noted.	<ul style="list-style-type: none"> ▪ The Government notes the recommendation.
<p>Recommendation 21</p> <p>The committee recommends that the industry be given the opportunity to self-regulate. If after two years persistent problems remain, consideration should be given to moving to a prescribed code of conduct under the Trade Practices Act.</p>	Noted.	<ul style="list-style-type: none"> ▪ The Government notes the industry's efforts to develop a draft code of conduct and encourages it to finalise the Code as soon as possible. ▪ The Government considers an effective voluntary industry code is preferable to a prescribed code of conduct as it minimises both the regulatory burdens for business and the potential costs to consumers and other industry stakeholders. ▪ If two years after the implementation of an industry code of conduct there is evidence of persistent problems, the Government will consider alternative policy approaches.

Recommendation	Position	Comment
<p>Recommendation 22</p> <p>The committee recommends that all public and private collecting institutions implement the Indigenous Art Commercial Code of Conduct as appropriate, and that all such institutions aim to purchase from dealers and art centres that have adopted the Code.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Government notes the recommendation and, subject to an appropriate code of conduct being in operation, will raise the recommendation in appropriate Commonwealth and state fora.
<p>Recommendation 23</p> <p>The committee recommends that, once the Indigenous Art Commercial Code of Conduct has been developed, the Commonwealth undertake a project examining and making recommendations regarding further initiatives to enhance the integrity of the Indigenous art market. This work could include, but need not be confined to considering:</p> <ul style="list-style-type: none"> • what role governments might play in giving effect to an industry code of conduct; and • whether further steps should be taken toward a system of dealer accreditation. 	<p>Agreed in principle.</p>	<ul style="list-style-type: none"> ▪ The Government is supportive of practical initiatives which aim to enhance the integrity of the Indigenous art market but notes that it is generally the responsibility of the industry itself to give effect to a self-regulatory initiative. The Government does not generally play a significant role in giving effect to self-regulatory industry codes of conduct. ▪ Where appropriate, the ACCC works collaboratively with other agencies and industry organisations to ensure compliance with the TPA and enhance market conduct in all industry sectors, including the Indigenous arts and craft sector. ▪ Subject to the finalisation and implementation of the Code of Conduct, the Government will consider examining further measures to enhance the integrity of the Indigenous art market, including dealer accreditation.
<p>Recommendation 24</p> <p>The committee recommends that as a matter of priority the [G]overnment introduce revised legislation on Indigenous communal moral rights.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Attorney-General's Department is preparing briefing on the Indigenous communal moral rights (ICMR) issue for the Attorney-General. ▪ No decision has been made on whether the Government will proceed with the ICMR legislation.

Recommendation	Position	Comment
<p>Recommendation 25</p> <p>The committee recommends that, recognising the complexity of the issues in this area, the Commonwealth introduce appropriate legislation to provide for the protection of Indigenous cultural and intellectual property rights, that the legislation be drafted to ensure prosecutions 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.</p>	<p>Not agreed.</p>	<ul style="list-style-type: none"> ▪ Australia's current intellectual property legislation can be used to protect Indigenous cultural and intellectual property rights. ▪ Customs has existing powers at the border (under the Notice of Objection Scheme) to detain and deal with imported goods suspected of infringing intellectual property rights. ▪ Australian Government officials actively participate in the work being undertaken in the World Intellectual Property Organisation (WIPO) through the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. ▪ Relevant Government agencies will continue to work closely together to develop approaches to address these complex issues at both the domestic and international level.
<p>Recommendation 26</p> <p>The majority of the committee recommends that a resale royalty scheme not be introduced at this time, because of the lack of benefit to most artists, and in particular Indigenous artists, and the lack of new evidence to the contrary.</p>	<p>Not agreed.</p>	<ul style="list-style-type: none"> ▪ The Government has committed to implementing a resale royalty scheme for visual artists. ▪ The Government considers that artists stand to gain both additional rights in their work and the prospect of future income into the longer term where their works are on-sold. ▪ Relevant government agencies will be working closely together to implement the scheme through a proposed cross-Government working group. ▪ The detail of the scheme will be fleshed out following targeted consultation with the visual arts and art market sectors. ▪ Legislation will then be developed once the parameters of the scheme are finalised.
<p>Recommendation 27</p> <p>Given the importance of and growing interest in Australian Indigenous arts and craft internationally, the committee recommends that the Commonwealth examine the feasibility of compiling industry statistics to record international exhibitions, sales and exports of Indigenous arts and craft, including, where possible, their value in dollar terms.</p>	<p>Agreed.</p>	<ul style="list-style-type: none"> ▪ Data supporting the reporting of international Indigenous arts and crafts sales are not currently collected. ▪ The ABS, in cooperation with other agencies (Customs, Tourism Australia, Austrade, DEWHA, Treasury), will look at the feasibility of developing statistical information relating to international exhibitions, sales and exports of Indigenous arts and crafts. ▪ See also Recommendation 1.

Recommendation	Position	Comment
<p>Recommendation 28</p> <p>The committee recommends that, once the Indigenous Art Commercial Code of Conduct is introduced, Austrade consider a policy of only providing assistance to businesses that have agreed, either directly or through an industry association membership, to abide by the Code.</p>	<p>Not agreed.</p>	<ul style="list-style-type: none"> ▪ Austrade is bound by the provisions of the <i>Australian Trade Commission Act 1985</i> (the Act) to encourage trade between Australia and foreign countries. Restricting assistance to those businesses that have agreed to any code of conduct is not consistent with the provisions of the Act. ▪ The Government does support ethical buying and selling practices and acknowledges the positive impacts of such practices in creating a sustainable and respected export market for Indigenous art. An appropriate code could, therefore, be used as an educational tool and means to promote such practices. Further, Austrade would encourage exporters to be aware of and comply with such a code.

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<p>Recommendation 29</p> <p>The committee recommends that the Commonwealth support increased efforts to showcase Indigenous visual arts and craft internationally.</p>	<p>Noted.</p>	<ul style="list-style-type: none"> ▪ The Australian Government, through the Department of Foreign Affairs and Trade (DFAT) actively promotes a positive and accurate image internationally of Australia's Indigenous cultures. The showcasing of Indigenous visual arts, craft and design is integral to this promotional effort. In addition to the touring internationally of Indigenous visual art exhibitions through the <i>Aboriginal and Torres Strait Islander</i> program, DFAT's funded grants program will continue to consider for support worthwhile applications aimed at acquainting overseas audiences with Australia's diverse Indigenous cultures. Where possible, DFAT's focus country programs, aimed at enhancing awareness of Australian culture in targeted countries, will include an Indigenous visual arts component; and the <i>International Cultural Visits</i> program will continue to host visits to Australia of international arts decision-makers who have an interest in Indigenous art and craft. ▪ At the same time, the Australia Council's program <i>Showcasing the Best</i> has played an important role in profiling high quality art abroad, in particular by leveraging international opportunities such as the Musée du quai Branly project in Paris. The success of the Australian contribution to the quai Branly was based on strong collaboration between various agencies, including the Australia Council and DFAT. The Government sees this project as an example of effective cross-Government cooperation. ▪ Relevant agencies, including DFAT, the Australia Council and Austrade, will investigate how the promotion of Indigenous art on the world stage can be better targeted and coordinated across Government into the future. They will take advantage of the synergies between DFAT's cultural diplomacy programs and the Australia Council's efforts to promote artists and their work internationally. Austrade support for international commercial activities will also be considered.