

The Senate

Standing Committee on
Environment, Communications,
Information Technology and the Arts

Indigenous Art – Securing the Future

Australia's Indigenous visual arts and craft sector

June 2007

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**Aboriginal and Torres Strait Islander
Australians are advised that this report
may contain the names of Indigenous
Australians who are deceased.**

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Key Recommendations

Recommendation 4

The committee recommends that the Commonwealth establish a new infrastructure fund to assist Indigenous visual arts and craft; that this fund complement existing NACIS program funding; that this infrastructure fund be for a sum of the order of \$25 million, made available over a period of five years; and that the fund be administered by DCITA.

Recommendation 6

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.

Recommendation 8

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.

Recommendation 15

The committee recommends that, as a matter of priority, the ACCC 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.

Recommendation 17

The committee recommends that that Indigenous Art Commercial Code of Conduct be completed as soon as possible.

Recommendation 18

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 (see also recommendations 23, chapter 10 and 28, chapter 14).

Recommendation 20

The committee recommends that, once completed, all stakeholders in the industry examine, disseminate and adopt where relevant the Indigenous Art Commercial Code of Conduct.

Recommendation 21

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.

Recommendation 24

The committee recommends that as a matter of priority the government introduce revised legislation on Indigenous communal moral rights.

Recommendation 29

The committee recommends that the Commonwealth support increased efforts to showcase Indigenous visual arts and craft internationally.

Other Recommendations

Recommendation 1

The committee recommends that Australian Customs Service and DCITA initiate a review of the feasibility of Customs further classifying exported art into Indigenous and non-Indigenous categories, to assist future market analysis.

Recommendation 2

The committee recommends that, to increase the skills base of art centre managers and prospective managers, DCITA, in conjunction with DEST, initiate discussions with selected tertiary institutions on the feasibility of introducing courses on art centre management and cross-cultural issues.

Recommendation 3

The committee recommends that DCITA, in co-operation with the Office of Indigenous Policy Coordination, ensure that art centres in the Northern Territory are aware of opportunities to apply for funding from the Aboriginal Benefits Account, 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.

Recommendation 5

The committee supports the roles of DEWR and Indigenous Business Australia 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.

Recommendation 7

The committee recommends that the Commonwealth consult with stakeholders in the industry, particularly Desart 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.¹ These standards may include (but not be confined to):

- 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.

Recommendation 9

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.

Recommendation 10

The committee recommends that DCITA implement triennial operational funding for art centres as an option for projects seeking support under the NACIS program.

Recommendation 11

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.

Recommendation 12

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.

Recommendation 13

The committee recommends that DCITA, in consultation with DEST, develop programs to deliver education and training in the sector particularly in relation to:

- governance and business planning and management;

1 On this subject, see in particular Desart, *Submission 49*, pp 24–25.

- **artists' rights and responsibilities;**
- **artistic development for artists; and**
- **education of the market.**

Recommendation 14

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.

Recommendation 16

The committee recommends that DCITA analyse the failure of the NIAAA 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 Australian scheme.

Recommendation 19

The committee recommends that the NAVA 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.

Recommendation 22

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.

Recommendation 23

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:

- **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.**

Recommendation 25

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.

Recommendation 26

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.

Recommendation 27

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.

Recommendation 28

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.

List of Abbreviations

ABA	Aboriginal Benefits Account
ABaF	Australia Business Arts Foundation
ACA	<i>Aboriginal Communities Act 1979 (WA)</i>
ACCC	Australian Competition and Consumer Commission
ACGA	Australian Commercial Galleries Association
ACS	Australian Customs Service
AITB	Artists in the Black
ALCQ	Arts Law Centre of Queensland
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cwth)</i>
ANKAAA	Association of Northern, Kimberley and Arnhem Aboriginal Artists
Art.Trade	Australian Indigenous Art Trade Association
ATO	Australian Taxation Office
ATSIAB	Aboriginal and Torres Strait Islander Arts Board (of the Australia Council)
ATSIC	Aboriginal and Torres Strait Islander Commission
BSAB	Building Stronger Arts Business
CDEP	Community Development Employment Projects
CLC	Central Land Council
CMC	Cultural Ministers Council
COAG	Council of Australian Governments
CPI	Consumer Price Index
CTDA	<i>Commercial (Trade Descriptions) Act 1905 (Cwth)</i>
DCA	Department of Culture and the Arts (WA)

DCITA	Department of Communications, Information Technology and the Arts
DEST	Department of Employment, Science and Training
DEWR	Department of Employment and Workplace Relations
DIAND	Department of Indian Affairs and Northern Development (Canada)
DoTARS	Department of Transport and Regional Services
EU	European Union
GST	Goods and services tax
IBA	Indigenous Business Australia
ICAS	Indigenous Capital Assistance Scheme
ICBD	Indigenous Creative Business Development
ICIP	Indigenous cultural and intellectual property
ICMR	Indigenous communal moral rights
ICS	Indigenous Cultural Support
ICV	Indigenous Community Volunteers
IIP	Indigenous intellectual property
IRADF	Indigenous Regional Arts Development Fund
ISBF	Indigenous Small Business Fund
ITTTTS	IT Training and Technical Support
IVASI	Indigenous Visual Arts Special Initiative
NACIS	National Arts and Craft Industry Support
NAVA	National Association for the Visual Arts
NEIS	New Enterprise Initiative Scheme
NIAAA	National Indigenous Arts Advocacy Association
NIC	National Indigenous Council

NTN	Networking the Nation
OEAIP	Office of Evaluation and Audit (Indigenous Programs)
OIPC	Office of Indigenous Policy Coordination
ORAC	Office of the Registrar of Aboriginal Corporations
STEP	Structured Training and Employment Projects
TPA	<i>Trade Practices Act 1974 (Cwth)</i>
VACS	Visual Arts and Craft Strategy

Chapter 1

Introduction and conduct of inquiry

1.1 Australian Indigenous art is a story of the flowering of one of the world's great contemporary movements in art. It is a story of cultural reinvigoration and communication within, between and beyond Indigenous communities. It is a story of successful links being forged across areas of Indigenous policy and need, particularly between culture and health. And it is a story of economic growth and prosperity amidst poverty and economic disadvantage.

1.2 Set against the rapid evolution of contemporary Indigenous visual arts and craft is emerging concern about the sustainability of the sector, and allegations of unethical business practices within it. It was at the intersection of the great hopes and sincere concerns held for Indigenous art that this inquiry was born.

1.3 On 15 August 2006, the Senate referred the following matter to the Committee for inquiry and report by the first sitting day of 2007:

Australia's Indigenous visual arts and craft sector, with particular reference to:

- (a) the current size and scale of Australia's Indigenous visual arts and craft sector;
- (b) the economic, social and cultural benefits of the sector;
- (c) the overall financial, cultural and artistic sustainability of the sector;
- (d) the current and likely future priority infrastructure needs of the sector;
- (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;
- (f) 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
- (g) future opportunities for further growth of Australia's Indigenous visual arts and craft sector, including through further developing international markets.

1.4 With the inquiry attracting considerable interest from stakeholders, on 18 October 2006 the Senate granted an extension of time to report until 22 March 2007. On 27 February 2007 the Senate granted a further extension of time to report until 12 June 2007 and on 12 June 2007 the Senate granted a final extension to 21 June 2007.

1.5 In accordance with its usual practice, the Committee advertised details of the inquiry in *The Australian*. The Committee also contacted a range of organisations and individuals, inviting submissions. The committee received submissions from 89 different individuals and organisations, listed in Appendix 1. The committee conducted seven hearings in Canberra, Kununurra, Darwin, Alice Springs, and Sydney. Details of the hearings are shown in Appendix 2. A list of tabled documents and additional information is in Appendix 3.

1.6 During the course of the inquiry the committee or committee members visited a number of sites, including:

- Waringarri Aboriginal Arts, Kununurra
- Jirrawun Arts, Kununurra
- Our Land Gallery, Kununurra
- Red Rock Art, Kununurra
- Karen Brown Gallery, Darwin
- Amoonguna Community art centre, Amoonguna
- Irrkerlantye Arts, Alice Springs
- Tangentyere Artists, Alice Springs
- Gallery Gondwana, Sydney.

Members were also shown around Alice Springs, giving them a picture of the distinctive circumstances of art production in that town.

1.7 The committee is extremely grateful to the artists and workers in the sector who took the time to show the committee the industry and to talk to it about the issues. The committee particularly extends its thanks to Lyn Allen at DCITA, Nigel Ridgway and Jacqueline Thorpe at the ACCC, John Oster at Desart, Paul Sweeney at Papunya Tula, Bev Knight and Diane Mossenson of the Australian Commercial Galleries Association, Martin Wardrop of Art.Trade, and Mark Gooch in Alice Springs, as well as many other industry participants who gave freely of their time and knowledge.

1.8 The committee was honoured by the opportunity to meet with, and in some cases hear evidence from, artists in their communities, including Freddy Timms, Nancy Noonju, Nellie Gordon, Peggy Griffiths, Kim Griffiths, Donna Burak, Miriam Charlie, Djambawa Marawilli, Regis Pangiraminni, Peggy Brown, Mary Napangardi Brown, Joy Nagala Brown, Jimmy Frank, Andrea Nungarrayi Martin, Valerie Napaljarri Martin, Bess Nungarrayi Price and Amelia Turner. It regrets it was unable to take up all the many invitations extended to it to visit art centres, communities and galleries all over Australia.

1.9 The committee was impressed with the enormous commitment of stakeholders in the industry, and the passion they all share for Indigenous art and Indigenous community development. The committee also noted a level of anger and

conflict in different parts of this sector. Much of what was claimed about business practices appeared to be based on hearsay, and there was little tolerance of the diversity of people and legitimate ways of doing business which might all contribute to the benefit of Indigenous creativity, Indigenous art and Indigenous prosperity.

1.10 There is no doubt that there have been unethical, and at times illegal, practices engaged in within the field of Indigenous arts and craft. There are probably still instances of these problems, and there may be people seeking to take advantage of issues within the sector by ripping off artists or art centres.

1.11 In spite of all this, the committee urges everyone in the sector to recognise each other's sense of commitment, and reap the benefits of co-operation, rather than sow seeds of rancour and division.

1.12 The committee notes that the Indigenous Art Centres Strategy and Action Plan was developed in 2003. While the Action Plan provides for the future development of the sector, the committee believes that it should be reviewed in due course, especially in light of the recommendations in this report.

1.13 The committee acknowledges the valuable reviews that have been undertaken by those committed to the future of the sector, including the report of the Review of the Aboriginal Arts and Craft Industry (1989), Desart and Felicity Wright's report, *The Art and Craft Centre Story* (1999), and the *Report of the Contemporary Visual Arts and Craft Inquiry* (The Myer Report, 2002).¹ In particular the committee notes the work still underway by the National Association for the Visual Arts (NAVA) and others on an Indigenous Australian Art Commercial Code of Conduct. This work has the potential to be crucial to the future of the industry.

1.14 The committee has made a number of recommendations that involve adoption and implementation of a code of conduct. It recognises that the NAVA-led process is aimed at developing a broad code suitable for application by the different participants in the sector. The committee supports this process. As this report demonstrates, there is a need for a practical code that sets out clear parameters for appropriate conduct in the industry. An industry code will need to set clear expectations regarding behaviour in this market, and be widely adopted, if it is to have an impact on unethical conduct in the sector. In chapter 10 the committee indicates that this code should be released as soon as possible, so that further steps toward implementation can then be taken.

1 R. Myer, *Report of the Contemporary Visual Arts and Craft Inquiry* (cited throughout this report as the Myer Report), June 2002.

Chapter 2

The size and scale of Australia's Indigenous visual arts and craft sector

2.1 The Indigenous visual arts and craft sector has been growing at a considerable rate for many years. It is now a dominant element of the arts in Australia, and is recognised as such internationally.

2.2 This chapter outlines the data available, both past and present, on the size and scale of the Indigenous arts and craft sector. The fact that Indigenous art is not only an industry but also an integral part of a culture makes it difficult to define what should be measured as the 'size' or the 'scale' of the sector. This is most relevant when considering the magnitude of the role of art centres. As the following data suggest, art centres represent a minority of the total trade, however they provide development and opportunities for new artists, as well as community, cultural (and often other) services that commercial dealers and city galleries do not. Assessments of the size of the sector are also affected by a wide range of factors as to what is included within the definition of Indigenous art and craft.¹

Previous analyses of the scale of Australia's Indigenous visual arts

2.3 The first significant analysis of the Indigenous visual arts and craft sector as an industry was undertaken by Timothy Pascoe and completed in 1981.² That report found that:

- Indigenous people received around \$1 million, or 40 per cent of the approximately \$2.5 million in sales for 1979-80, with most production taking place in the Northern Territory;
- there were around 5000 producers Australia-wide;
- 'at sixty producing communities identified, income from the sale of artefacts amounted to about 5 per cent of total cash income';
- around 80 to 90 per cent of production ended up overseas; and
- most production was of 'tourist art' or 'ethnographic art', with only a sixth of all sales being 'fine art'.³

1 Viscopy, *Submission 44A*, p. 6; Ananguku Arts and Culture Aboriginal Corporation, *Submission 45*, p. 2.

2 T. Pascoe, *Improving Focus and Efficiency in the Marketing of Aboriginal Artefacts*, Report to the Australia Council and Aboriginal Arts and Crafts Ltd, June 1981.

3 Altman Review, pp 22–23, citing results of Pascoe study.

2.4 Other papers published around that time indicated that the market was growing steadily, while expressing concerns about its future.⁴ Figures from Aboriginal Arts and Crafts Pty Ltd, which at that time held a significant proportion of the total market, showed their sales had grown more than a hundred-fold from 1971 to 1981.⁵

2.5 The Altman Review in 1989 attempted some estimate of the size of the Indigenous visual arts sector, but pointed out a 'total absence of industry statistics'.⁶ That review made the following estimates:

- Indigenous people received just over \$7 million per annum from sales of their art;
- using a number of assumptions, a conservative estimate of the retail market was \$18.5 million;
- the number of producers was around 5000;
- only a few hundred artists earned more than \$5000 per annum from their works, and the income earned varied hugely from artist to artist, and from place to place;
- it was extremely rare for an Indigenous artist to earn a living income from art alone; and
- income from the arts was growing rapidly in real terms.⁷

2.6 Desart's major 1999 research project was based on surveys of 39 'government supported community art centres in remote Australia'.⁸ The researchers estimated there were 4500 artists working through the surveyed centres.⁹

2.7 In 1998, the Australian Bureau of Statistics (ABS) released its first report based on a survey of commercial art galleries. All commercial galleries, including Indigenous art centres, were surveyed for this work; however direct sales by artists, sales by auction, and sales by businesses for which art sales were not the primary

4 Jon Altman, 'The Structure and Future of Artefact Production for Market Exchange in North-central Arnhem Land', in P Loveday and P Cooke (eds), *Aboriginal Arts and Crafts and the Market*, North Australia Research Unit, ANU, Darwin, 1983, pp 7–19; Nicholas Peterson, 'Aboriginal Arts and Crafts Pty Ltd: A Brief History', in P Loveday and P Cooke (eds), *Aboriginal Arts and Crafts and the Market*, North Australia Research Unit, ANU, Darwin, 1983, pp 60–65; Peter Cooke, 'The Craft Adviser's Role in the Battle Against Headless Crocodiles', in P Loveday and P Cooke (eds), *Aboriginal Arts and Crafts and the Market*, North Australia Research Unit, ANU, Darwin, 1983, pp 66–70.

5 Nicholas Peterson, 'Aboriginal Arts and Crafts Pty Ltd: A Brief History', in P Loveday and P Cooke (eds), *Aboriginal Arts and Crafts and the Market*, North Australia Research Unit, ANU, Darwin, 1983, p. 61.

6 Altman Review, p. 12.

7 Altman Review, pp 33–35, 40, 70.

8 Felicity Wright, *The Art and Craft Centre Story*, vol. 1, ATSIIC, Canberra, 1999, p. 3.

9 Felicity Wright, *The Art and Craft Centre Story*, vol. 1, ATSIIC, Canberra, 1999, p. 297.

business activity were excluded.¹⁰ The ABS reported that Indigenous art sales in 1996–97 were \$15 million, 'which was 11% of total gross sales' made by commercial art galleries. The ABS estimated that commercial gallery sales were approximately a quarter of all art sales.¹¹ Thus, if \$15 million was only a quarter of the market, this would suggest that total Indigenous art sales were around \$60 million per annum in the mid–1990s.

2.8 There was significant regional variation in the proportion of commercial art gallery sales of Indigenous art. Five million dollars of the \$15 million in sales occurred in the Northern Territory alone, representing the majority of its art market.¹² In contrast, the proportion of Indigenous art sales in other jurisdictions was significantly lower.

2.9 In 2001 the ABS released a second report on art galleries. By that stage it was estimated that commercial gallery sales of Indigenous art in 1999–2000 were worth \$35.6 million.¹³ Taking 1996–97 as the base year, this represented a 46 per cent per annum growth in sales through commercial galleries.

2.10 In 2006 the ABS released an analysis of Aboriginal and Torres Strait Islanders' participation in arts and culture.¹⁴ The study reported that of the 282 000 Indigenous Australians aged over 14, 16.2 per cent said they had participated in arts or crafts activities in the last year. The levels were higher in remote areas (19.1 per cent) than non-remote (15.1 per cent). The disparity between remote and non-remote is much more striking when the question concerned whether people were paid for that activity. A total of 9.9 per cent of remote Indigenous Australians, or around 7 600 people, received payment for making art or craft. That percentage dropped to just 3.1 per cent for Indigenous people in non-remote areas, although this still represents around 6 400 people.¹⁵

10 Australian Bureau of Statistics, *Commercial Art Galleries, Australia*, Cat. No. 8651.0, 1998, p. 9, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8651.01996-97?OpenDocument>, accessed January 2007.

11 Australian Bureau of Statistics, *Commercial Art Galleries, Australia*, Cat. No. 8651.0, 1998, p. 9, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8651.01996-97?OpenDocument>, accessed January 2007. It is assumed that this ratio would be the same for the Indigenous art market as for the art market as a whole.

12 Australian Bureau of Statistics, *Commercial Art Galleries, Australia*, Cat. No. 8651.0, 1998, p. 4, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8651.01996-97?OpenDocument>, accessed January 2007.

13 Australian Bureau of Statistics, *Commercial Art Galleries, Australia*, Cat. No. 8651.0, 2001, p. 3, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8651.01999-2000?OpenDocument>, accessed January 2007.

14 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Australians: Involvement in Arts and Culture*, Cat. No. 4721.0, 2006.

15 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Australians: Involvement in Arts and Culture*, Cat. No. 4721.0, 2006, p. 23.

2.11 When it comes to actually earning a living from art, however, the picture in the ABS data is different. The ABS reported 1 501 Indigenous Australians over 14 were engaged in creative arts occupations generally, which narrowed to 786 when confined to visual arts and crafts.¹⁶ Those Indigenous Australians who earned their living in the visual arts and craft were likely to earn less than their non-Indigenous counterparts,¹⁷ a notable result given the prominence of Indigenous visual arts.

2.12 The NSW government provided the breakdown of the ABS statistics by jurisdiction (Table 2.1):

Table 2.1 Indigenous Australians whose main occupation is visual art or craft

Indigenous Visual Arts and Craft Professionals	Number	%
New South Wales	161	20.5
Victoria	23	2.9
Queensland	209	26.6
South Australia	132	16.8
Western Australia	144	18.3
Tasmania	7	0.9
Northern Territory	110	14.0
Australian Capital Territory	0	0.0
Total	786	100.0

Source: ABS, 2001 Census of Population and Housing, cited in Arts NSW, *Submission 53*.

2.13 The Myer Report in 2002 quoted figures prepared for the Aboriginal and Torres Strait Islander Board of the Australia Council indicating that:

- from 1990 to 1998, sales of Indigenous art at auction had risen from \$169 000 to over \$5 million;
- the total Indigenous art and craft market was worth almost \$200 million per annum.¹⁸

2.14 The Australia Council indicated that in 2002, an analysis performed for the Cultural Ministers Council (CMC) Statistics Working Group suggested the market

16 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Australians: Involvement in Arts and Culture*, Cat. No. 4721.0, 2006, pp 26–27.

17 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Australians: Involvement in Arts and Culture*, Cat. No. 4721.0, 2006, p. 29.

18 Myer Report, p. 165.

was worth around \$100 to \$120 million.¹⁹ Also in 2002, Altman and others echoed the Altman Review's 1989 observation about the data on the industry:

There are no comprehensive data on the Indigenous arts industry as a whole, and the limited statistical data that do exist are too incompatible to provide the basis for an accurate understanding of the market.²⁰

2.15 Altman and others' research noted that the 1999–2000 ABS value of around \$35.6 million was probably an underestimate, and stated that '[t]he figure is probably somewhere between \$100 million and \$300 million'.²¹

2.16 Historical estimates of the value of the sector are summarised in Table 2.2.

Table 2.2 Historical estimates of the value of the Indigenous arts and craft sector

Year	Source	Estimated value
1981	Pascoe	\$2.5 million
1989	Altman	\$18.5 million
1996-97	ABS	\$15 million*
2001	ABS	\$35.6 million*
2002	Myer	\$200 million
2002	Cultural Ministers Council	\$100 – \$120 million
2002	Altman and others	\$100 – \$300 million

Notes: * Sales at commercial galleries only, estimated in 1996-97 to represent approximately one quarter of the total market.

The size and scope of the sector as reported to the committee

2.17 The \$100 to \$300 million estimate put forward by Altman and others in 2002 has tended to be adopted as the favoured estimate of the value of the industry. It

19 Australia Council, *Submission 38*, p. 9, citing H. Guldberg, 'The Indigenous Art and Craft Market: A Preliminary Assessment for the Cultural Ministers Council Statistics Working Group', 2002, p. 5.

20 Jon Altman, Boyd Hunter, Sally Ward and Felicity Wright, 'The Indigenous Visual Arts Industry', in Jon Altman and Sally Ward (eds), *Competition and Consumer Issues for Indigenous Australians*, ACCC, Canberra, 2002, p. 67.

21 Jon Altman, Boyd Hunter, Sally Ward and Felicity Wright, 'The Indigenous Visual Arts Industry', in Jon Altman and Sally Ward (eds), *Competition and Consumer Issues for Indigenous Australians*, ACCC, Canberra, 2002, p. 67.

repeatedly appeared in some form in submissions to the committee as the likely value of the sector.²² Both Desart and ANKAAA give a higher range, of \$200 to \$500 million.²³ These higher estimates may simply reflect organisations making rough revisions to the \$100 to \$300 million range, by adjusting for four years' inflation, as well as growth in what is widely agreed is a rapidly expanding sector.²⁴ Michael Reid suggested the industry was worth at least \$400 million, and perhaps \$500 million.²⁵

2.18 The Australia Council's submission indicated that in March 2006 the four main peak bodies for artists were serving 'about 6000 Indigenous artists in over 80 remote Indigenous communities'.²⁶ The committee understands the number earning a significant income from the art is probably significantly smaller, based on past ABS data and other sources.²⁷

2.19 Notwithstanding previous attempts to estimate the size of the sector, stakeholders continue to note that the size and value of the sector need to be better understood.²⁸ The Northern Territory government indicated that the 'economic

22 NAVA, *Submission 27*, p. 1; Arts Law Centre of Australia, *Submission 36*, p. 3; Australia Council, *Submission 38*, p. 9; DCITA, *Submission 50*, p. 1.

23 Desart, *Submission 49*, p. 8; ANKAAA, *Submission 63*, p. 8.

24 The NT government submission quoted the National Association for the Visual Arts (NAVA)'s *National Indigenous Art Commercial Code of Conduct Discussion Paper*, 2006, as containing an estimate of \$400 million. That estimate was derived from a conference paper by Associate Professor Clive Barstow, which in turn states that the data is based on 1996 ABS data. The 1996 ABS data do not contain such a figure. See NT government, *Submission 57*, p. 9; NAVA, *National Indigenous Art Commercial Code of Conduct, Section 6, Buyers, Collectors and Commissioners of Indigenous Art, Discussion Paper*, NAVA, Sydney, 2006, p. 7, <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/indigenouscommercial>, accessed January 2007; Clive Barstow, 'The Bridge Between: Connecting Studio Pedagogy to the Indigenous Art Market', Paper presented to the Australian Council of University Art and Design Schools conference, September 2005, <http://www.acuads.com.au/conf2005/papers/barstow.pdf>, accessed January 2007. However, if one assumes that 25 per cent of Indigenous art work is sold through commercial galleries (which was the ABS estimate for the ratio for art in general in 1996), and assume the 46 per cent rate of growth from 1996–97 to 1999–2000 continued through to 2006, then that would produce a result in the vicinity of \$400 million.

25 The lower figure appears in his submission (*Submission 2*); the higher figure is in Papunya Tula Artists' Manager Mr Sweeney's report of a conversation with Mr Reid. See *Committee Hansard*, 21 February 2007, p. 11.

26 *Submission 38*, p. 6.

27 See for example ABS, 2001 Census of Population and Housing, cited in Arts NSW, *Submission 53*; Hans Guldberg, *The Arts Economy 1968-1998: Three decades of growth in Australia*, Australia Council Research Report, Australia Council, Sydney, 2000.

28 Terri Janke and Robynne Quiggin, *Indigenous Cultural and Intellectual Property: The Main Issues for the Indigenous Arts Industry in 2006*, Prepared for the Aboriginal and Torres Strait Islander Arts Board of the Australia Council, May 2006, p. 50; Australia Council, *Submission 38*, pp 8–9; Desart, *Submission 49*, p. 9; Professor Jon Altman, *Submission 11*, p. 3; Queensland Government, *Submission 58*, p. 7.

benefits of the Aboriginal visual arts and craft industry have been notoriously difficult to quantify'.²⁹

2.20 In preparing its submission to this inquiry, ANKAAA performed a review of information from 25 of its 38 member art centres. For 2005–06, these art centres generated \$12 million of sales income, and received \$1.7 million in DCITA – National Arts & Crafts Industry Support (NACIS) funding. On average, around 60 per cent of the value of sales is returned to artists, and about 40 per cent to the art centre.³⁰

2.21 Desart also provided information specific to its operations, indicating:

Indigenous Art Centres in central Australia generate sales of \$12m... Desart would suggest [visual arts] industry sales value in the order of \$25m – \$30m annually. Desart represents some 3000 jobs for artists in Central Australia.³¹

Desart's John Oster indicated that of that \$12 million, around \$7 million was the income of the two largest art centres, Papunya Tula and Balgo, and that the remaining 41 central Australian art centres were sharing the other \$5 million.³²

2.22 Ananguku Arts & Culture Aboriginal Corporation (Ku Arts) indicated that:

In South Australia, it is estimated that there are between 800 and 1500 Indigenous artists (excluding artefact makers) earning at least \$1000 per annum directly from the sale of their work...

In APY Lands, there are approximately 400 artists who engage regularly in visual arts practice as a means of generating earned income. Perhaps 50 of these artists earn more than \$10 000 per annum from that practice. A further 100 to 200 engage in arts practice on an occasional basis.

The net value of art sales through all art centres in APY Lands is in the range \$1.3–\$1.5 million per annum, with current annual growth of an estimated 30%. Craft sales are estimated to be around \$400 000 per annum for the region.³³

2.23 Desart represents art centres operating in the communities served by Ku Arts,³⁴ so there may be some double-counting in the figures provided by the two groups. Brian Tucker indicated that in 2004–05, the average turnover of those art centres which he audited was just under \$400 000.³⁵

29 Northern Territory Government, *Submission 57*, p. 8.

30 ANKAAA, *Submission 63*, p. 8.

31 Desart, *Submission 49*, p. 9.

32 John Oster, Desart, *Committee Hansard*, 21 February 2007, p. 34.

33 Ananguku Arts & Culture Aboriginal Corporation, *Submission 46*, pp 2–3.

34 Ananguku Arts & Culture Aboriginal Corporation, *Submission 46*, p. 1.

35 Brian Tucker, *Submission 12*, p. 1.

2.24 The committee received several submissions from individual art centres and businesses about their work. Most of these centres would be rated as amongst the larger and more successful. Information about their operations included:

- Lockhart River Arts and Cultural Centre averaged turnover of \$750 000 in the last five years, distributing two-thirds of its income to artists.³⁶
- Maningrida Arts and Culture supports over 700 artists and distributed over \$1.1 million in the last financial year.³⁷
- Warlayirti Artists at Balgo (WA) had 400 artists 'on the books', half of whom were painting regularly, with an annual turnover of \$2.1 million, with 60 per cent going back to the artists.³⁸
- Waringarri Aboriginal Arts at Kununurra (WA) had 50 to 60 artists and a turnover of \$500 000, with 60 per cent going back to the artists.³⁹
- Papunya Tula has just funded its own new art centre, completed at a cost of \$1.2 million.⁴⁰
- The Rainbow Serpent had a turnover of \$4.75 million in 2005–06, paying around \$420 000 directly to Indigenous suppliers and another \$100 000 indirectly through royalties, as well as paying over \$ 1.25 million in wages, some of which are going to Indigenous people under the company's Indigenous employment policy.⁴¹

2.25 The committee received limited information on the structure of the market and the value of exports:

- Red Rock Art sells around 10 per cent overseas, 60 per cent through art galleries around the country and the balance through the local Kununurra tourist market.⁴²
- Maningrida Arts sells 26 per cent through exhibitions, 14 per cent overseas, 10 per cent through its Darwin outlet, seven per cent through Internet sales, with the balance being sold direct to private collectors or over the counter at Maningrida itself.⁴³

36 Lockhart River Arts and Cultural Centre, *Submission 67*.

37 Maningrida Arts and Culture, *Submission 51*.

38 Warlayirti Artists Aboriginal Corporation, *Submission 10*.

39 Waringarri Aboriginal Arts, *Submission 52*.

40 Papunya Tula Artists, *Submission 14*. If evidence given by John Oster referred to above is correct (that the combined income of Balgo and Papunya Tula is about \$7 million), and Balgo's centre has an income of \$2.1 million according to their submission, that suggests Papunya Tula's annual gross income is about \$5 million.

41 The Rainbow Serpent, *Submission 17*.

42 Kevin Kelly, Red Rock Art, *Committee Hansard*, 19 February 2007, p. 36.

43 Ms Kohen, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, pp 47–48.

- The Rainbow Serpent reported Tourism Australia data indicating international visitors spent \$11 million on Indigenous art and craft in the March 2006 quarter.⁴⁴

2.26 Limited information is available on the international market for Indigenous art. The Australia Council noted that, while the Australian Customs Service collects figures on arts and crafts exported, it does not classify them further (as Indigenous or non-Indigenous), while the ABS commercial gallery survey did not collect data on sales that were destined to go overseas.⁴⁵

2.27 There are some retailers of Indigenous art overseas,⁴⁶ or catering primarily to the overseas market. These include The Rainbow Serpent, a business operating six outlets at Sydney and Brisbane International Airports.⁴⁷ In addition, there are tourism operators organising art tours to Indigenous communities and art centres, a market dominated by overseas visitors.⁴⁸ The future of the market, particularly international sales, is discussed further in chapter 14.

Conclusion and issues

2.28 The Indigenous visual arts and craft sector has grown rapidly over a long period. Annual growth in the value of Indigenous art in the order of 40 to 50 per cent appears to have been sustained for much of the last decade or so, though some participants in this inquiry believe sales may plateau or fall due to some overheating of the market.⁴⁹ Despite a possible short-term adjustment in the market, most stakeholders appear to believe further growth is possible, including in the international market.⁵⁰

2.29 While there is massive growth in the value of the industry, it is not clear that there is a commensurate expansion in the number of artists. This means one of two things: either that artists are earning more from their work – which is certainly the case for some of them at least – or that more of the value of the market is being captured by participants other than the artists. Given that many of those participants

44 The Rainbow Serpent, *Submission 17*.

45 Australia Council, *Submission 38*, p. 15.

46 For example the Australian Aboriginal Fine Art Gallery of New York, <http://www.aboriginalvisions.com/>, accessed January 2007; the Aboriginal Art Gallery Bähr, http://www.aboriginal-art.de/art_eng/kunst.htm, accessed January 2007.

47 The Rainbow Serpent, *Submission 17*.

48 NAVA, *National Indigenous Art Commercial Code of Conduct, Discussion Paper*, Section 7, The Indigenous Art Industry, Tourism Operators and Tourists, NAVA, Sydney, 2006, p. 5, <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/indigenouscommercial>, accessed January 2007.

49 Mr Kevin Kelly, Red Rock Art, *Committee Hansard*, 19 February 2007, p. 28.

50 For example Michael Reid, *Submission 2*; Dr B Korman, *Submission 64*; Mr Paul Johnstone, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 33.

are non-Indigenous, this may raise the question of whether artists and Indigenous communities are getting a fair share of the growing value of their works. The increasing criticism of 'carpetbaggers', scrutiny of the secondary market, and growing calls for a resale royalty scheme, all may be symptoms of this concern. The committee received much evidence on this topic, which is addressed further in chapters eight, nine and ten.

2.30 While the submissions gave the committee some idea of the scale of the sector, it is likely to become increasingly difficult to know its size. Factors that make accurate estimates difficult include:

- increasing sales taking place on the Internet;
- the range of types of transactions and discounting in the sector;⁵¹
- the increasing number of businesses participating in a complex market; and
- the large number of sales, paid for in cash or in kind, made by individual artists independent of art centres or galleries, particularly in and around Alice Springs.⁵²

2.31 The committee acknowledges the need for good data to underpin analysis of any industry, and the desire of many stakeholders to see that data improve.⁵³ It recognises that the relatively wide ranging estimates of the size of the sector highlight limitations to the data currently available. Nevertheless, the committee found that available data were in many cases very useful. Art centres in general have audited financial statements, and their peak bodies appear to have a good sense of the business of their members. ABS data on commercial galleries, together with auction results regularly published by major auction houses, give a reasonable indication of what is happening in the fine art market.

2.32 Additional efforts to analyse the export and tourist markets is something that may be of further help. The committee recognises that there may be challenges in some contexts in classifying art and craft works in order to separately identify Indigenous work. However, it believes this is something that warrants further investigation.

Recommendation 1

2.33 The committee recommends that Australian Customs Service and DCITA initiate a review of the feasibility of Customs further classifying exported art into Indigenous and non-Indigenous categories, to assist future market analysis.

51 Brian Tucker, *Submission 12*, p. 1.

52 Christine Godden, *Submission 41*, p. 1.

53 See for example WA Department of Culture and the Arts, *Submission 18*, p. 2; Australia Council, *Submission 39*, p. 3; Mr Paul Johnstone, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 40.

Chapter 3

The benefits of Indigenous art

3.1 The Indigenous visual arts and craft sector provides very significant economic, social and cultural benefits.¹ These benefits extend to Indigenous individuals and communities, and the wider Australian and international community.

3.2 Indigenous art has been said to be 'Australia's greatest cultural gift to the world' and 'our most profound, significant and important cultural export'.² The cultural benefits of the sector have been described as 'immeasurable'.³ Indigenous cultural activities have been described as 'unequivocally the one area of its [Australian Government] greatest success'.⁴

3.3 The Myer Report, commenting on the benefits, noted that:

Just as the sector as a whole provides enormous benefits, cultural, social and economic to the community, so too are Indigenous artists able to bring these advantages both to their immediate communities, and to Australian society in general.⁵

3.4 The multi-faceted and often unquantifiable nature of many of these benefits was highlighted in evidence:

Pride, self esteem, maintenance of culture, transmission of culture, inter-generational learning, meaningful activity, purposeful life, creative achievement, recognition from peers; recognition from national and international art media, provision of much of our nation's 'corporate identity'; provision of 'Australia's greatest cultural export' and other social and spiritual benefit are difficult to quantify. But they should not be discounted even in the most rational market economies. This is an industry that cannot and should not simply be measured in statistical economic data.⁶

1 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, pp 69–71; Ms Hetti Perkins, Senior Curator, ATSI Art, NGA, *Committee Hansard*, 9 February 2007, p. 52; Mr John Oster, Executive Officer, Desart, *Committee Hansard*, 21 February 2007, p. 21.

2 Minister for Indigenous Affairs, Senator Amanda Vanstone; Peter Garrett MP, quoted in Matt Price, 'Blacks' art "our greatest cultural gift"', *The Australian*, 29 November 2005.

3 ANKAAA, *Submission 63*, p. 10.

4 Ms Marion Scrymgour, NT Minister for Arts and Museums, *Committee Hansard*, 20 February 2007, p. 4.

5 Myer Report, p. 52.

6 Ms Christine Godden, *Submission 41*, p. 2.

Economic benefits

3.5 The economic benefits of the sector are substantial although difficult to quantify mainly due to the lack of comprehensive data. Economic benefits accrue to the nation, the individual artists and their communities, the arts industry and related business sectors.

3.6 As outlined in chapter two, Professor Altman estimated in 2002 that the national value of Indigenous visual arts sales was between \$100 million and \$300 million.⁷ More recent estimates place the value of the sector at \$400–\$500 million.⁸

3.7 The Northern Territory and the states benefit economically from the sector. In the Northern Territory (NT) the sector has been described as being of 'crucial importance'.⁹ The NT government stated that it is difficult to estimate the economic benefits of the sector to the Territory with 'a mass of different statistics on sales figures ranging from \$6.9m–\$12 million in direct sales from NT art centres to a gross sales figure of \$50 million'.¹⁰ The NT government noted however that one organisation recently estimated that art centres and related retailing of Indigenous art and craft in central Australia equals or exceeds the value of the local pastoral industry.¹¹

3.8 A range of data gives some indication of the importance of the sector in the Northern Territory:

- One study in 2002 estimated that arts and craft centres in 2002 generated \$10 million of sales annually.
- Northern Territory tourism statistics estimated that in 2000-01, \$28 million was spent by visitors to the NT on Aboriginal art. A six year trend analysis suggested that this figure is below sales in 1995-96 and that expenditure on Aboriginal art peaked in 1997-98 at approximately \$50 million.
- The ABS in its 1999-2000 Commercial Art Galleries Australia survey estimated that \$11 million worth of art was sold retail in the NT by 41 outlets, including Aboriginal art centres. While a figure on Aboriginal art was not provided it was stated that almost all of this came from Aboriginal art sales.

7 Jon Altman, *Developing an Indigenous Arts Strategy for the Northern Territory: Issues Paper for Consultations*, 2003, p. 9 (hereafter 'Developing an Indigenous Art Strategy'). See also Australia Council, *Submission 38*, p. 16.

8 NT Government, *Submission 57*, p. 9; Aranda Aboriginal Art, *Submission 83*, p. 2.

9 Ms Marion Scrymgour, NT Minister for Arts and Museums, *Committee Hansard* 20 February 2007, p. 2.

10 NT Government, *Submission 57*, pp 9–10.

11 NT Government, *Submission 57*, p. 10.

- In 2002 ANKAAA surveyed 18 of its member art centres (almost all in the NT) and estimated that in 2001-02 their gross estimated turnover was \$6.23 million.¹²

3.9 In Victoria, Arts Victoria stated that the sector is 'very active...and is exhibiting strong potential for growth'.¹³

3.10 Data indicate that investment in arts infrastructure generates positive financial returns to artists. Professor Altman has calculated the ratio of artists' incomes generated by each dollar of operational subsidy to arts centres and found that the returns to artists ranges from 1:1.5 to 1:4.3.¹⁴ Altman noted that 'while the ratios are highly variable, they all indicate that a positive return is generated from every dollar of operational support'.¹⁵ Professor Altman also noted that Indigenous artists reinvest in their arts centres at the rate of 40 per cent (based on 40 per cent sales commission).¹⁶ Altman pointed out:

This is a statistic that is often overlooked in arguments about public investment and Indigenous dependency and debunks some of the long-standing myths – community-controlled arts centres are in fact underwritten by a public/private funding mix.¹⁷

3.11 There are also a number of indirect or spin-off benefits of the Indigenous arts sector. These include domestic and inbound tourism, as well as less recognised natural and cultural resource management activities that generate biodiversity benefits.

3.12 In the Northern Territory, in 2001-02 the Travel Monitor survey indicated that 13 per cent of interstate visitors and 27 per cent of international visitors to the NT came 'to experience real Aboriginal culture'. Some 58 per cent of international and 48 per cent of interstate visitors included Aboriginal art or cultural activities as part of their Territory visit. This translated into an estimated \$38 million expenditure on Aboriginal art and \$31 million on cultural tours.¹⁸

3.13 In Queensland, cultural tourism also plays an important role. In terms of domestic cultural tourism, data show that in 2004, the state recorded 47 000 visitors to Aboriginal art, craft and cultural displays.¹⁹

12 *Developing an Indigenous Arts Strategy*, p. 9.

13 Arts Victoria, *Submission 70*, p. 3.

14 *Developing an Indigenous Arts Strategy*, p. 12.

15 *Developing an Indigenous Arts Strategy*, p. 12.

16 Art centres operate on an average commission rate of 30-40 per cent. See Desart, *Submission 49*, p. 7.

17 *Developing an Indigenous Arts Strategy*, pp 12–13.

18 *Developing an Indigenous Arts Strategy*, p. 13.

19 Queensland Government, *Submission 58*, p. 7.

3.14 There are additional unrecognised benefits associated with contemporary arts practice where this is undertaken by Indigenous people in remote areas. The use of natural resources by artists is itself positive, because it provides incentive for Indigenous people to use their ecological knowledge to manage these resources sustainably. There are other environmental spin-offs generated by people residing on their country – for example, the maintenance of customary fire regimes that reduce fires that destroy raw material inputs to the arts.²⁰

3.15 Indigenous people themselves benefit financially from the sale of their arts and craft. However submissions noted that the success of Indigenous art does not necessarily translate into major economic benefits or better living standards for many Indigenous artists.²¹ The Northern Territory government noted that 'Aboriginal artists and craftspeople on the ground earn a small part of the overall "take", despite the fact they are the obvious lynchpin of the industry'.²²

3.16 In terms of economic benefits, in 1987-88 it was estimated that 2504 Indigenous artists in the Northern Territory earned \$3.6 million, an average of \$1437 per artist. Data provided by ANKAAA for 2001-02 indicates that an estimated 2650 artists in its region earned \$3.68 million, an average of \$1388 per artist. Professor Altman noted that this figure is 'remarkably similar' to the figure for 1987 - 88, despite the CPI increasing by 45 per cent over the same time period.²³

3.17 Economic benefits also arise from the income stream generated into communities that would otherwise rely on CDEP and welfare payments.

3.18 Not only do individual artists derive an income through selling their art, other community members also benefit. Especially in remote areas, the concept of sharing is significant. Artists share their cash income with family members, as well as consumer goods they have purchased with their arts income, such as motor vehicles. In this way, the money derived from the arts is distributed within the community.²⁴

3.19 In remote communities, in particular, income derived from art sales is often the only source of non-government income and this money supports communities economically:

The production of art in remote communities like Maningrida is often the only non-government money coming through the community and art has an enormous economical impact. For example, in the financial year 05/06,

20 *Developing an Indigenous Arts Strategy*, pp 13–14.

21 Australia Council, *Submission 38*, p. 16; Victorian College of the Arts, *Submission 39*, p. 1.

22 NT Government, *Submission 57*, p. 10.

23 *Developing an Indigenous Arts Strategy*, p. 14. See also Professor Jon Altman, *Committee Hansard*, 9 February 2007, p. 79.

24 Lockhart River Arts and Cultural Centre, *Submission 67*, p.1; Ms Monique Weemstra, *Submission 22*, p. 1.

more than \$1.1 million was distributed to artists in the Maningrida region. Art is a major success story for Maningrida people, and the self esteem, wellbeing and growing confidence of the artists cannot be overvalued.²⁵

In smaller communities for example Nyapari, there is no school, no shop, no clinic, the office is rarely open and the ONLY thing for people to do there is visit or work in the Art Centre. Although the economic return may be quite low (as the average earning is less than \$2000 pa) the cumulative effect on the community can be important...Because of the communal nature of Aboriginal culture their earnings are distributed widely according to family and cultural custom.²⁶

3.20 As noted above, the economic benefits that accrue from the Indigenous visual arts and craft industry are not limited to Indigenous people. Other Australians across the visual arts and craft industry, along with other related business sectors, such as tourism, retailing and publishing, are significant beneficiaries in terms of jobs and profits.²⁷

Social benefits

3.21 Activities in the visual arts and craft sector provide significant social benefits to Indigenous people. Participation in the visual arts enhances social cohesion within communities, promotes health and well-being and provides a range of benefits across many sectors of Indigenous society:

To be an Indigenous artist or artisan is quite a different calling than to be an artist in the European tradition. These social benefits manifest themselves in the communal nature and place of art in the lives of Indigenous people and in the lives of individual Indigenous artists. The function of art and craft extends beyond aesthetic pleasure – it is embedded in daily life, family connection, traditional law as well as in dreaming lore and spirituality. For many Indigenous artists, visual art and craft is not seen as a commodity but rather as something akin to a family member – it represents a multi-layered connection to the past, present and future. The social role of creating visual art and craft is also primary to the social benefit and meaning of art and craft activity in the community context.²⁸

Benefits to Indigenous groups

3.22 The medium of visual arts has been successfully used as a form of expression for many different groups within the Indigenous community. The visual arts have provided, in particular, an avenue for the advancement of Indigenous women – in

25 Maningrida Arts and Culture, *Submission 51*, p. 2.

26 Desart, *Submission 49*, p. 10. See also Lockhart River Arts and Cultural Centre, *Submission 67*, p. 2.

27 NT Government, *Submission 57*, p. 10; Professor Jon Altman, *Submission 11*, p. 4.

28 Victorian College of the Arts, *Submission 39*, p. 1.

personal development and self esteem, financial independence and empowerment within their communities. Many Indigenous women have excelled in the visual arts including Emily Kame Kngwarreye and Dorothy Napangardi.²⁹ The art-coordinator of Ampilatwatja art centre, which was formed by a group of senior women of the area, noted the benefits that involvement with the arts has provided:

I have watched with a sense of pride these very traditional women go out into the world and share with an open heart all that is precious to them. I have also enjoyed watching the heartfelt response and the affection and growing understanding of not only their culture but also who they are as people.³⁰

3.23 Indigenous youth have also benefited from involvement in the arts. Arts projects focus on connecting young people to their Aboriginal identity and emphasise cultural maintenance. One project *Big ones, little ones* involves Indigenous school children producing artworks from schools around Australia and exhibiting their art alongside established Indigenous artists. The visual arts are also practiced by older Indigenous members of their communities.³¹

3.24 Visual arts have also been used as a form of expression for Indigenous people with disabilities. Some Indigenous artists with disabilities have accessed programs to further encourage their artistic abilities. The programs have provided a vehicle to express themselves, improve their self-esteem and provide a means to support themselves financially.³² An example of this approach is the Mwerre Anthurre Artists, an artists' collective in Alice Springs, which focuses on art skills development for artists with disabilities.³³

3.25 Art programs in prisons and detention centres often provide an avenue for Indigenous prisoners to achieve better appreciation of their own culture through the arts and to develop a means of employment when they leave the prison system.³⁴

Health benefits

3.26 Engagement in arts activities can have a positive impact on the health and wellbeing of Indigenous Australians. Research indicates that involvement in creative

29 T Janke, *The Social and Cultural Benefits of Indigenous Visual Arts*, October 2006, Attachment to Australia Council, *Submission 38*, pp 21–23 (Hereafter referred to as the Janke study). The committee acknowledges the comprehensive nature of this study in examining the social and cultural benefits of the sector.

30 The Artists of Ampilatwatja, *Submission 20*, p. 1. See also Lauraine Diggins Fine Art, *Submission 26*, p. 3.

31 Janke study, p. 24.

32 Janke study, pp 23–24.

33 ACGA, *Submission 82*, p. 5.

34 Arts Law Centre of Australia, *Submission 36*, pp 5–6. See also NSW Aboriginal Justice Advisory Council, *Submission 37*, p. 2.

activities can contribute to better health outcomes and stronger communities.³⁵ Art has been used for healing Indigenous patients suffering from a range of physical and mental ailments. One example is the Art Therapy class in Sydney, a project supported by the Redfern Aboriginal Medical Services, for Indigenous women who suffer from a mental illness.³⁶

3.27 The visual arts have also been used to educate Indigenous people about health issues. An example of a successful health art education project is Johnny Briscoe's Caterpillar Dreaming spirit painting, *Anumarra – Working for Health*, 1979 which became a symbol for the Aboriginal health worker program in central Australia.³⁷

The benefits of art centres

3.28 Arts centres and organisations provide strong social and cultural functions. Desart noted that 'it is well understood that the role of an Art Centre goes far beyond the production of artworks, and exercise a charter that amounts to a social responsibility in their own communities'.³⁸

3.29 The multi-faceted role of art centres was emphasised during the inquiry:

The Art Centre provides, firstly, a focus for the maintenance of culture of the region. It is a place where artists can congregate, check each other's progress, seek opinions, joke and argue among themselves, paint, eat biscuits and drink tea, socialize...acquire social skills, and generally escape from the often difficult conditions of community life. The simple fact that these spaces exist is a social benefit that must not be underestimated.³⁹

The role of Art Centres incorporates the economic, social and cultural, all of which provide significant benefits to Indigenous artists and the community. For many artists the making of artwork represents their culture, connection to country and their identity.⁴⁰

3.30 As noted above, art centres often provide many social benefits which are not directly related to the arts. These services include assistance with health and medical, family, education, legal, transport and financial management issues. Arts centres also provide a safe and supportive environment for artists and their families.⁴¹ Providing services such as these contributes to the social and physical health of community members, including artists.

35 WA Department of Culture and the Arts, *Submission 18*, p. 2.

36 Janke study, p. 20.

37 Janke study, p. 19.

38 Desart, *Submission 49*, p. 10. See also Ms Gloria Morales-Segovia, Assistant Manager, Warlukurangu Artists, *Committee Hansard*, 21 February 2007, p. 37.

39 Mr Brian Tucker Accounting, *Submission 12*, p. 2.

40 ANKAAA, *Submission 63*, p. 9.

41 ANKAAA, *Submission 63*, pp 9–10; Ms Monique Weemstra, *Submission 22*, pp 1–2.

3.31 There are examples at Yuendumu, Kintore, Balgo, Blackstone and other communities with successful art centres where substantial contributions have been made to community facilities and programs such as dialysis units, swimming pools, youth programs, local festivals and sports events.⁴² Papunya Tula Artists provided the following example of the support provided to the local community:

Over the last six years, PTA has funded the establishment of a remote renal dialysis unit at the Kintore community. More than \$1 million was raised in 2000 at a charity auction...This year, the company made cash donations of over \$200,000, to support the ongoing running costs of the Western Desert Nganampa Walytja Palyantjaku Tjutaku Aboriginal Corporation, which is responsible for delivering the service to thirty-one patients.

In November 2005, PTA played a fundamental role in raising over \$900,000 for the construction of a swimming pool at Kintore community....These projects are just some of the significant positive changes that PTA has been able to deliver to the community. As well as these major projects the company provides numerous other forms of assistance on a daily basis.⁴³

3.32 Arts centres provide many cultural benefits through the sale of artworks, developing artists' skills, cataloguing and archiving artworks, collating artists CVs and culturally significant stories and documenting art techniques.

3.33 The production of art and craft works goes together with transferring cultural knowledge. In addition, the provision of arts and craft activities enables Aboriginal people to reside on their traditional lands and to engage in diverse customary activities and cultural practices – 'enabling Aboriginal people to reside on country by developing a strong arts sector contributes to maintaining Aboriginal culture and stimulating participation in other customary activities too'.⁴⁴

3.34 Indigenous arts organisations, while having a strong role in rural and remote areas, also have strong social and cultural functions in urban areas. In Sydney, for example, the Boomalli Aboriginal Artists Cooperative plays an important role in supporting Indigenous artists and bringing the Indigenous community together for functions and special events.⁴⁵

Cultural benefits

3.35 Indigenous artists express their culture, identity and connection to the land and their community through their art. The visual arts sector provides cultural

42 Desart, *Submission 49*, p. 10.

43 Papunya Tula Artists, *Submission 14*, p. 2. See also Aranda Aboriginal Art, *Submission 83*, p. 4.

44 Ms Monique Weemstra, *Submission 22*, p. 2.

45 Arts Law Centre of Australia, *Submission 36*, p. 6. See also Dr Diane Mossenson, WA State Chairman, ACGA, *Committee Hansard*, 23 February 2007, p. 7.

maintenance and promotion of traditional culture for many Indigenous people and communities. ANKAAA stated that the 'cultural benefits are immeasurable in providing cultural activities, dialogue and maintenance within the community'.⁴⁶

3.36 The Victorian College of the Arts emphasised the centrality of the visual arts in maintaining culture:

The Indigenous visual arts and crafts sector is absolutely central to cultural sustainability for Indigenous Australia and cultural diversity in the wider Australian community. The sector is a living demonstration of the continual connection to land, family, dreaming, culture and place that dates back many millennia. Arts practice is a fundamental part of the way of life for Indigenous artists and communities.⁴⁷

3.37 Indigenous artists, by drawing on this cultural heritage, strengthen their culture through the practice of their visual arts:

The visual arts funding and programming provided in the Indigenous visual arts sector has allowed cultural expression to strengthen and develop...The visual arts sector has facilitated the handing down of information and skills from generations. Along with this comes the reinforcement of cultural obligations such as the honouring of traditional styles. Artists engage with elders to learn important cultural stories.⁴⁸

...Indigenous 'art' is perhaps the prime contemporary medium for senior people to explore, document and share often profound cultural knowledge (of creation, country and family) and as such offers not just reinforcement of that knowledge but also a very significant guard against its loss through non-transmission to younger generations...the Inquiry should be mindful of the intangible value of Indigenous art and craft in preserving irreplaceable cultural knowledge.⁴⁹

3.38 Professor Morphy also noted that Indigenous artists are 'well trained in Indigenous contexts':

This is vitally important, because most Aboriginal artists in remote areas do not come out of nowhere, they come out of generations of art practice, which in their own lifetimes leads to intensive training before they will be producing work for sale or in public context. That does not happen everywhere, but certainly in all the areas of Arnhem Land in central

46 ANKAAA, *Submission 63*, p. 10. See also Mr Djambawa Marawilli, Chairperson, Association of Northern Kimberley and Arnhem Aboriginal Artists, *Committee Hansard*, 20 February 2007, p. 18.

47 Victorian College of the Arts, *Submission 39*, p. 1.

48 Janke study, p. 3.

49 Ananguku Arts and Culture, *Submission 46*, p. 3.

Australia that I know, artists come from almost their own Indigenous schools of art.⁵⁰

3.39 The land, customary practices and other cultural elements are the foundations of Aboriginal art in many different ways – especially in remote communities:

...the fact that the Aboriginal arts and craft sector is often founded on the customary sector and based on the land and its spiritual and cultural value, is what makes Aboriginal art unique and attractive for the market. Hence, cultural aspects increase the competitive advantage of Aboriginal arts and contribute to the commercial opportunities of the arts industry.⁵¹

3.40 Dr Mossenson noted that maintaining strong culture is 'integral to the continual success of the Aboriginal art industry':

...we will soon witness in some areas of the country the death of the last custodians of traditional songs, ceremonies and dances. As a result artwork that we currently revere today will be produced in a different form and with different cultural integrity. It will, I suspect, be all the greatly diminished as artwork and as a record of culture.⁵²

3.41 Another submission noted that without a thriving Aboriginal culture, upon which Indigenous art is based, Australia would lose 'much of its shine and consequent dollars'.⁵³

3.42 The practice of art making within communities is part of the continuum of ceremonial practice, reinforcing people's connection with traditional lands, ancestral beliefs and ritual. It also provides opportunities for the transmission and reinforcement of cultural knowledge to younger members of the community.⁵⁴ The Australia Council characterised Indigenous visual arts and culture as 'a bridge between generations, ensuring as much as possible that custodial information is not lost'.⁵⁵

Visual art is an expression of belonging and connection with long ago traditions and spiritual beliefs. The painting of creation and dreaming stories is a manifestation of this cultural and spiritual expression. Expressions of Indigenous visual art, like other forms of art, depict an ongoing connection and relationship with land and sea. In this way, art is like a clan motifs or insignia representing legal custodianship.⁵⁶

50 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 70.

51 Ms Monique Weemstra, *Submission 22*, p. 2.

52 Dr Diane Mossenson, *Submission 78*, p. 3.

53 Ms Isabelle de Beaumont, *Submission 71*, p. 1.

54 Janke study, pp. 7–8; Caruana Fine Art, *Submission 31*, p. 2.

55 Australia Council, *Submission 38*, p. 17.

56 Janke study, p. 7.

3.43 A key issue for Indigenous communities is the reality that as older artists and community members pass away, culture is lost including stories of cultural significance, dance and language.

People often talk about the elders passing away and the culture being lost. Aboriginal people are very distressed about the loss of culture and it is always a priority...that the young people be trained in their own culture.⁵⁷

I am concerned about the possibilities for the generation of elders that I met to be able to pass on this very ancient culture to the next generation, their children and grand children...Aboriginal Art thrives on love for a particular area of land called 'country', the artist's country. You take that away and the art loses its roots as well as the specificity and power that captures so much international attention and acclaim.⁵⁸

3.44 The expression of Indigenous visual arts helps to promote the diversity of Indigenous cultural groups. The visual arts provide a means for clans and regions to express their own distinctive styles, and to develop their own diversity.⁵⁹ The visual arts also play a role in uniting Indigenous across clan groups. Arts events such as exhibitions and forums act as community events where Indigenous people can interact socially and culturally.⁶⁰ Visual arts and craft activities also provide a vehicle for the expression of Indigenous political and related concerns to the wider community.⁶¹

3.45 As well as providing cultural benefits to Indigenous people, Indigenous visual arts also provide cultural benefits to the wider Australian community, facilitate cultural diversity, and provide a 'bridge' to non-Indigenous Australians so that they can appreciate and learn about Indigenous culture.⁶²

3.46 Indigenous art makes a significant contribution to the culture of the nation. Desart noted that 'it provides the nation with a rich cultural foundation and contributes to the cultural fabric in this country where we value many diverse heritages'.⁶³ One witness noted that:

Indigenous art has had an important role in introducing to the broader community the significance of Aboriginal culture. For many it has been the first chance of a dialogue with Indigenous Australia.⁶⁴

57 Desart, *Submission 49*, p. 10. See also ANKAAA, *Submission 63*, p. 10.

58 Ms Isabelle de Beaumont, *Submission 71*, p. 1.

59 Janke study, pp 4–5.

60 Janke study, pp 12–13.

61 For a further discussion see Janke study, pp 10–12; Australia Council, *Submission 38*, p. 17; Queensland Government, *Submission 58*, p. 13.

62 Mbantua Gallery, *Submission 24*, p. 4; Professor Jon Altman, *Submission 11*, p. 5.

63 Desart, *Submission 49*, p. 10.

64 Mr Christopher Hodges, *Committee Hansard*, 23 February 2007, p. 5.

3.47 Indigenous art is well represented in the many public arts institutions and their exhibitions programs and is widely represented in many facets of Australian life:

Aboriginal visual art iconography is omnipresent. Aboriginal imagery is instantly recognisable and is used in everything from our money, our national architectural icons, and in corporate identity and advertising. This art and culture formed the centrepiece of the Opening Ceremony at the 2000 Sydney Olympics and more recently has graced the most important new public building in France. We submit this is a national treasure which must be nurtured and supported.⁶⁵

3.48 The NT government commented on the effect of the visual arts on the wider community:

There have been considerable social and cultural benefits for the Northern Territory population as a whole as a consequence of the increased prominence of Aboriginal visual arts and crafts, with that prominence being seen as a distinctive social and cultural marker for all Territorians.⁶⁶

3.49 Australia is also increasingly defined and promoted internationally in terms of Indigenous art and culture, as evidenced in projects like the Musee du Quai Branly commission in Paris. Indigenous art has been described as providing 'Australia's greatest cultural export'.⁶⁷

Conclusion

3.50 The committee was shown strong evidence of how the Indigenous visual arts and craft sector provides substantial economic, social and cultural benefits. Indigenous individuals and communities as well as the Australian community and the international community share in these benefits and are enriched by them.

3.51 Indigenous visual arts provide a means of cultural expression and are a vehicle for the maintenance and transmission of culture. The visual arts are used to promote health and well-being. They improve the lives of Indigenous women and provide self esteem to young Indigenous people. The benefits of Indigenous arts and craft go beyond the purely economic and the quantifiable to enrich and sustain Indigenous culture, and promote this ancient culture to the wider Australian community and to the world.

65 Desart, *Submission 49*, p. 10.

66 NT Government, *Submission 57*, p. 12.

67 Ms Christine Godden, *Submission 41*, p. 2.

Chapter 4

Art centres

To a large extent the Indigenous visual arts sector has been built on the backbone of the Indigenous art centres which provide crucial support and development for Indigenous artists. Indigenous art centres often play a key role in bringing economic returns to Indigenous artists and their communities.¹

4.1 Art centres lie at the heart of the blossoming Australian Indigenous visual arts sector. They have facilitated the communication of the creative work of thousands of Indigenous Australians to the wider Australian community and the world. This chapter describes art centres, their roles and functions, and issues raised in the inquiry regarding them.

4.2 It is recognised that the Indigenous arts and craft sector is not only comprised of the artists and art centres in the regional and remote locations of the Northern Territory, South Australia and Western Australia. There are also established and developing Indigenous arts and craft industries in urban and regional centres where artists and support organisations play an important role in bringing greater recognition of the diversity of Indigenous cultures in Australia. The committee received little evidence in this area, but it is the subject of the following chapter.

What is an art centre?

4.3 Many of the works of Indigenous artists in rural and remote areas are created and sold through the Indigenous art centres. There are at least 110 of these centres around the country.² The term 'art centre' refers to an Indigenous owned and operated entity, generally located on an Indigenous community. They are typically managed by a board comprising local Indigenous people and operate as not-for-profit entities distributing benefits to stakeholders who are local Indigenous artists. Usually they act as an agent for the production and sale of art works for community members.³

4.4 The art centres themselves differ considerably in size and structure:

Some are open-sided, vast tin sheds providing shelter from the beating sun and tropical rains; others are more sophisticated, with architect-designed buildings and air-conditioned storage and display areas. Some were set up or double as women's centres where women can escape family and other

1 Arts Law Centre of Australia, *Submission 36*, p. 4.

2 DCITA, *Submission 50*, p. 2; NAVA, *National Indigenous Art Commercial Code of Conduct, Discussion Paper*, Section 1, Introduction, NAVA, Sydney, 2006, p. 7, <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/indigenouscommercial>, accessed January 2007.

3 Desart, *Submission 49*, p. 7.

pressures... A number of art centres encourage visitors and have a display area with works hanging and stacked against the wall... Others prefer to operate at 'arm's length' and do not encourage large groups of visitors.⁴

Some art centres do not buy in their artists' work and consequently the artists have to wait for the dealer to sell to remit the funds. This is in direct contrast to Papunya Tula who buy in their artists' work.⁵

4.5 Most art centres are supported through four peak bodies:

- ANKAAA, the Association of Northern, Kimberley and Arnhem Aboriginal Artists, is the peak advocacy and support agency for Indigenous artists and 38 Indigenous owned art centres across four regions of the Top End – the Tiwi Islands, Kimberley, Arnhem Land and the Darwin/Katherine regions. Its core mission is to:
 - support the continuing development of a strong Indigenous arts industry for Indigenous artists by ensuring its members have a strong and respected voice in the Arts industry;
 - improve the standard and quality of life for Indigenous artists and assist its membership in cultural and arts maintenance; and
 - work together to support the development of strong and sustainable indigenous owned art centres.⁶
- Desart, the Association of Central Australian Art and Craft Centres, has 52 full, associate and individual members. Its member art centres must be Aboriginal owned and managed by Aboriginal executive. Its mission is to:
 - work together to create stronger Indigenous artists, stronger Aboriginal-owned art centres and stronger, sustainable industry practice;
 - support Indigenous artists in Central Australia develop the skills, knowledge and ability to make informed and meaningful decisions;
 - create an Indigenous arts industry that offers the potential for Indigenous people to improve their quality of life and achieve their aspirations; and
 - build an Indigenous arts industry that has great business practice and offers pathways for all the different Aboriginal-owned art centres to grow.⁷
- Ananguku Arts and Culture Aboriginal Corporation (known as Ku Arts) represents artists of the Anangu Pitjantjatjara Yankunytjatjara Lands in the far

4 Susan McCulloch, *Contemporary Aboriginal Art: A Guide to the Rebirth of an Ancient Culture*, Allen & Unwin, St Leonards, 1999, pp 42–43.

5 Lauraine Diggins Fine Art, *Submission 26*, p. 2. Maningrida Arts and Culture art centre purchases all works by member artists. See *Submission 51*.

6 ANKAAA, *Submission 63*, p. 2.

7 Desart web site, <http://www.desart.com.au/about/index.htm>, accessed 16 April 2007.

north-west of South Australia and has a membership of some 400 residents of the ten major communities and homelands in the region.⁸ Its principal objectives are to:

- provide enhanced economic opportunity for artists through the making and selling of art;
 - increase the viability and sustainability of arts practice;
 - secure appropriate resources for the development of viable and sustainable arts practice;
 - provide increased arts practice opportunities for young people and men;
 - use contemporary arts practice as a means for effecting intergenerational cultural knowledge transfer and maintaining and extending cultural knowledge;
 - support the development of skills, experience and opportunities necessary for Indigenous people to direct and manage their arts practice and enterprise; and
 - develop and provide services, practices and procedures that support effective arts-based economic and cultural development towards the creation of more sustainable and independent communities.⁹
- UMI Arts was established in late 2005 to support artists and craftspeople from Mount Isa, across the Gulf of Carpentaria, Cape York and the Torres Strait.¹⁰ The organisation aims to support and promote Indigenous artists and craftspeople who live and work in far north Queensland and to support, maintain and promote the unique cultures in the region.¹¹

4.6 Art centres lie at the heart of Indigenous visual arts and play a vital role in the work of most Indigenous artists.¹² Art centres are generally owned and controlled by Indigenous people and facilitate the production of art by Indigenous people.¹³

The Art Centre provides, firstly, a focus for the maintenance of the culture of the region. It is a place where artists can congregate, check each other's progress, seek opinions, joke and argue among themselves, paint, eat biscuits and drink tea, socialize, jump on the computer, make travel plans, undertake house-keeping tasks they would never perform in their own

8 Ananguku Arts & Culture Aboriginal Corporation, *Submission 46*, p. 1.

9 Ananguku Arts & Culture Aboriginal Corporation, *Submission 46*, p. 2.

10 Umi Arts web site, www.umiarts.com.au, accessed 16 April 2007; DCITA web site, [http://archive.dcita.gov.au/2005/10/artbeat_spring_2005/indigenous\)arts_agency_launched_in_far_north_queensland](http://archive.dcita.gov.au/2005/10/artbeat_spring_2005/indigenous)arts_agency_launched_in_far_north_queensland), accessed 26 April 2007.

11 Umi Arts web site, www.umiarts.com.au, accessed 16 April 2007.

12 DCITA, *Submission 50*, p. 1.

13 DCITA, *Submission 50*, p. 2;

homes, acquire social skills, and generally escape from the often difficult conditions of community life. The simple fact that these spaces exist is a social benefit that must not be underestimated.¹⁴

4.7 Art centres have two key cultural roles: they facilitate the maintenance of Indigenous culture *within* the community, as well as facilitating the transmission of that culture to the world *beyond* the community.¹⁵

4.8 ANKAAA stated in its submission that it is well recognised by the art centre sector that the role of art centres is far more than the buying and selling of artwork. They often provide many social benefits to the community such as access to Internet banking, assisting with understanding and completing forms, identifying and assisting with health issues such as eye testing, school programs, access to communication, transport, financial management assistance, youth programs, education, and providing a safe and supportive environment for artists and their families. There are also a variety of community development programs that operate in the art centres that are directed at alcohol and substance abuse, often supported through access to other government department programs.¹⁶

4.9 Art centres also provide access to, and support for, art centre workers to participate in formal training programs in areas such as governance training, arts administration, computer, internet and database training, occupational health and safety, use and maintenance of tools such as chainsaws used in the production of carvings, professional fine arts practice in a range of traditional and contemporary mediums, public speaking and presentations, tour guides, sales and promotion, curatorial skills and other identified areas.¹⁷

4.10 In its submission, Desart spelt out the many roles that art centres may perform within a community, noting that while they are primarily places for the creation and development of Aboriginal art – new media, new products, fine arts, painting, batik and fabric, print work, pottery, baskets and punu, tourist artefacts etc – they also may serve the following purposes:

Cultural maintenance

Aboriginal law and culture are the foundation for all the arts and crafts produced and sold at Art Centres and the means whereby Aboriginal identity is further defined and celebrated.

Places of renewal

14 Mr Brian Tucker, *Submission 12*.

15 NAVA, *National Indigenous Art Commercial Code of Conduct, Discussion Paper*, Section 1, Introduction, NAVA, Sydney, 2006, p. 7, <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/indigenouscommercial>, accessed January 2007.

16 ANKAAA, *Submission 63*, p. 9.

17 ANKAAA, *Submission 63*, p. 9.

Art Centres are places where communities can renew culture, values, law and economic integrity. They are places where Aboriginal culture is valued in both worlds. Attachment to country is renewed and strengthened. It is a place where Aboriginal communities can draw upon achievement, and engage with the mainstream community on the basis of this achievement.

As a place of work and earning income

In most communities, Art Centres provide the major, if not the only source of self generated income as well as providing an important platform for cultural maintenance and education. They play an important role in the financial well being of the community.

As a distributor to markets

Some Art Centres focus on the international market, some on the tourist market and some on the collection and distribution of arts and crafts for sale. Some Art Centres maintain galleries on communities, some sell to national and international galleries some sell wholesale, but all Art Centres have to locate their market and distribute their work.

Strengthening the community

A strong Art Centre means a healthy community. Art Centres play an important role in broader family and community social support. The future of communities lies with its youth and this is recognised by many artists. They are seeking a way to engage youth in the activities of Art Centres. Many Art Centres work with schools and kindergartens and play a role in disability support, and programme for petrol sniffers and others. Arts practice is used by some artists to teach bush tucker and healthy eating. In some cases Art Centres work with other community initiatives to grow employment opportunities and skill.

As places of learning

Artists and executive members are not just learners, but also educators, mentors and facilitators. Through their work and their practice they are growing an understanding of Aboriginal law, culture, heritage and history for both Aboriginal people and for others who engage with their work. Art Centres may be engaged in training under CDEP or other arrangements. They are also places where people can learn money story and how to manage things; learn how to 'walk in two worlds'.

Places of respite and care

Art Centres may provide a safe place for older people and women, where one can find company, a cup of tea and support. They also may provide food (breakfast and lunch) and many different informal support roles, from translating documents to arranging accommodation, transport and financial support.¹⁸

4.11 One submitter, Warlayirti Artists, commented that one of the strengths of the art centres model is that they are driven by 'community investment'— investment and commitment to artist careers, investment in the welfare of artists of families, an

18 Desart, *Submission 49, Attachment 2*, pp 10–11.

investment in keeping money within the local region/community and an investment in the long term sustainability of the organisation to keep on supporting artists and their communities for the years to come. While sometimes the short term returns for artists can seem small compared to direct selling to dealers/walk bys, the long term gains and the broader family, community and cultural gains are very strong. Managing the short and long term issues are key factors to the success of the art centre model.¹⁹

4.12 Maningrida Arts and Culture's submission noted that the centre not only supports more than 700 artists, it is a significant local employer of Aboriginal people in the community, employing Aboriginal people to work:

in packing and freight areas, photography, conservation, visual display and [to] conduct tours of the community Museum. Additionally the arts centre engages in cultural maintenance activities including the production of dictionaries, music recording, preservation of the archives, supporting researchers and students, responding to the community's request in respect of Cultural maintenance.²⁰

The production of art in remote communities like Maningrida is often the only non-government money coming through the community and art has an enormous economical impact. For example, in the financial year 05/06, more than 1.1 million was distributed to artists in the Maningrida region. Art is a major success story for Maningrida people, and the self esteem, wellbeing and growing confidence of the artists cannot be overvalued.²¹

4.13 At Waringarri, cultural maintenance is a key benefit of the art centre supporting not only the continuation of cultural practice and learning for young people but also providing education and an opportunity for increased understanding of Indigenous cultural/world views for the broader community. Maintenance of cultural practice is also recognised by the community as a significant contributor in sustaining a cohesive and socially healthy community.²²

4.14 At the Lockhart River Art Centre (LRAC), crafts and artefacts:

provide a small but important supplement to the incomes of many older women in the community. Financial benefits to artists are uneven, with a few doing very well while others derive more modest returns for their efforts. In the long run, in line with the cultural and family obligations prevalent in aboriginal culture, financial benefits end up being more widely spread around the community than can be accurately portrayed here.²³

19 Warlayirti Artists, *Submission 10*, p. 2

20 Maningrida Arts & Culture, *Submission 51*, p. 1.

21 Maningrida Arts & Culture, *Submission 51*, p. 1.

22 Waringarri Aboriginal Arts, *Submission 52*, p. 2.

23 Lockhart River Arts and Cultural Centre, *Submission 67*, p. 1.

4.15 In its submission, the Arts Law Centre of Australia noted that DCITA had recommended in its *Indigenous Arts Centres Strategy and Action Plan* that:

buying art directly from indigenous arts and crafts centres means the majority of income from sales will pass directly to the artists.²⁴

4.16 Other stakeholders in the sector were generally very positive about the art centres:

Art Centres do this by acting as a buffer between the highly competitive art market and the cultural environment of “country”.²⁵

4.17 A wide range of art dealers from whom the committee heard or received submissions were supportive of art centres, including members of Art.Trade,²⁶ members of the Australian Commercial Galleries Association,²⁷ and those who were members of neither.²⁸

4.18 Experts and analysts working in the sector, including Professor Morphy, Professor Altman, and Mr Caruana all recognised the key role of art centres and that they remained critical to the future of Indigenous art.²⁹

4.19 While art centres have a common focus, they come in different shapes and sizes. As DCITA pointed out:

No single art centre ‘model’ exists. Some art centres primarily operate on a studio basis, while others operate on a decentralised basis, buying work produced by artists living in surrounding outstations and communities. The level and extent of professional arts activity coming out of the art centres is diverse, with new art centres continually emerging out of developing arts practice. Some art centres operate as highly successful enterprises while others have more of a community arts development focus.³⁰

4.20 Most art centres are government supported, but one of the largest – Papunya Tula – is not.³¹ When thirty-nine government-supported centres were surveyed in 1999, their governance structures ranged widely:

24 Arts Law Centre of Australia, *Submission 36*, p. 10.

25 Cross Cultural Art Exchange, *Submission 16*, p. 3.

26 See, for example, Mr Martin Wardrop, *Committee Hansard*, 10 April 2007, p. 2; Mr Claude Ullin, *Committee Hansard*, 11 April 2007, pp 43–44.

27 See, for example, Mrs Beverley Knight, *Committee Hansard*, 23 February 2007, p. 3.

28 See, for example, Mr Kevin Kelly, *Committee Hansard*, 19 February 2007, p. 27; Mr AP Bond, *Submission 55*.

29 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 70; Professor Jon Altman, *Submission 11*, p. 9; Mr Wally Caruana, *Submission 31*;

30 DCITA, *Submission 50*, p. 1.

31 Papunya Tula Artists, *Submission 14*, p. 1.

Type of art centre	Number
Independent: incorporated associations	20
Independent: private company	1
Operating under a community council	11
Operating under a company	2
Operating under a women's organisation	2
Operating under other organisations	3

Source: Felicity Wright, *The Art and Craft Centre Story*, vol. 1 (Report), ATSIIC, Canberra, 1999, p. 27.

4.21 Governance of art centres, and the training of art centre staff and boards to ensure good management, were raised during the inquiry as issues (see below). The diversity of structures was not itself seen as a problem, however. Not being separately incorporated was thought by some as exposing centres to problems in some circumstances,³² but the main challenge, regardless of how art centres are organised, is seen to be ensuring that governance and business management is effective.

The limitations of art centres

4.22 Concerns were raised about some aspects of the art centre model and its limitations. Ms Diggins, of Lauraine Diggins Fine Art, stated that her preference has been working directly with art centres. However:

the stability of the centres can be problematic, with the exception of Papunya Tula, which has enjoyed over 20 years stability and reliability. I no longer work with two art centres because one has ceased to operate and the other is dysfunctional.³³

4.23 While acknowledging the many mutually rewarding relationships between galleries, art centres and artists, the Australian Commercial Galleries Association noted that the professionalism and expertise of art centres varies widely and this can cause a number of problems in dealings between galleries and art centres, such as:

In some art centres the personnel may have difficulties in dealing with galleries who have a greater level of experience and sophistication. The dramatic turnover of art centre personnel also means that both Gallerists and art centre managers must re-establish relationships and modes of dealing time after time.

Direct relationships between remote indigenous artists (both old and young) and Gallerists may be discouraged by some art centres. This can mean that

32 For example, Desart, *Submission 49*, Attachment 3 (Report of Organisational Audit, Irrunytju Arts, December 2006).

33 Lauraine Diggins Fine Art, *Submission 26*, p. 1.

the development of the artist's career, especially internationally, can be ad hoc. Gallerists need to be able to develop relationships with artists, so that their representation of those artists reflects an understanding of their community and its future needs and aspirations, both social and economic.

Art centres and artists sometimes compete directly with the galleries who are representing them by offering works for sale to third parties. Where an artwork is sold directly by an artist or an arts centre the artist does not pay GST and, in effect, an automatic 10% discount is therefore received. On top of this they may also offer work for sale at a further discount, thus undermining the market prices being established by the gallery.³⁴

4.24 Some dealers or buyers were critical of suggestions that art centres should be the only source of 'legitimate' Indigenous art, in some cases expressing concern that the market should not be over-regulated.³⁵ It was also noted that not every community has an art centre, and that analysis of and support for the industry needed to take account of this.³⁶

Issues facing art centres

4.25 Despite these few concerns, there was overwhelming support for the work of art centres. They face many challenges in their work, and a number of issues were raised by their supporters. These fell into several overlapping categories:

- governance;
- staff training needs;
- staff retention; and
- infrastructure pressures, including housing needs.

4.26 Many of the issues facing art centres arise from the wide range of work and intense pressures faced by art centre staff and boards. Mr Brian Tucker stated that:

...nothing is more crucial to the artistic, cultural and financial success of the Art Centre than the skill, competence and integrity of the Manager and other staff.

In my experience, Managers will sometimes have come from a marketing background, often, but not always, in Indigenous art; or they may have been a practicing artist or community cultural development worker; or have a curatorial history, or worked in Indigenous communities as a social worker. Rarely will they have financial management skills, although they may have rudimentary bookkeeping experience.

Yet all of these skills are required to successfully manage an Art Centre. Indeed, an Art Centre Manager would ideally be a qualified accountant ...

34 Australian Commercial Galleries Association, *Submission 82*, pp 3–4.

35 See, for example, Dr Ben Korman, *Submission 64*.

36 Identart, *Submission 25A*.

with experience managing a small to medium enterprise, and would have an extensive knowledge of the Australian art scene in general, and the Indigenous market in particular. They would also have extensive computer skills and knowledge of database systems, applied particularly to cataloguing of artwork. They would also be adept at colour mixing, photography, stretching canvases and stock control, to say nothing of the ability to write a convincing grant application...Yet there is no training available for this position, and Managers learn those skills they do not have on the job and from (often bitter) experience.³⁷

Governance

4.27 The importance of effective governance of art centres, and training to support it, was a recurring theme in the inquiry. Creative Economy expressed concern about the lack of 'mentoring or ongoing advice to meet governance responsibilities'.³⁸ State agencies and others were supportive of further governance training.³⁹ Art centres themselves, as well as their peak bodies, frequently drew attention to their needs in this area.⁴⁰ As Mr John Oster put it:

There is no doubt that artists are empowered through art creation. There needs to be a concerted effort though to match this with a genuine improvement in understanding about governance and organisation management. Most of the arts centre failures that we see—and failure is the exception rather than the rule—can be put down to failure of governance in one form or another.⁴¹

Staff training

4.28 A number of submitters referred to the need for training for art centre staff, with one suggestion that:

there needs to be a course of study developed for this occupation, to be delivered on-line or by correspondence, with supplemental residential tutoring/mentoring. Such material should also form the basis for content which could be taken up by interested community members. In respect of the latter, I am unreservedly in favour of the desirability of Indigenous people becoming more involved in the management of community Art Centres. Whether this happens is a moot point. In remote communities, most of the community members, and particularly the artists, have no interest in managing the Art Centre. While one of Flick Wright's reports was titled "I Just Want to Paint" that pretty much describes the attitude of

37 Mr Brian Tucker Accounting, *Submission 12*, p. 7.

38 Creative Economy, *Submission 8*, p. 4.

39 ArtsSA, *Submission 5*; WA Department of Culture and the Arts, *Submission 18*, p. 12.

40 See, for example, Waringarri Arts, *Submission 52*; Mr John Oster, Desart, *Committee Hansard*, 21 February 2007, p. 21.

41 Mr John Oster, Desart, *Committee Hansard*, 21 February 2007, p. 22.

most artists. Given a choice, I suspect most artists would prefer that someone else runs the Art Centre – they are independent (one would hope) of the various community factions, and there is someone to blame, other than themselves, when things go wrong. In the less remote communities, however the potential for Indigenous involvement is much higher, where basic education is more likely, and younger people more motivated to become involved.⁴²

4.29 Mr Tony Oliver of Jirrawun Arts suggested that a program be set up attached to one of the major universities or art schools in the country, for training future arts centre directors:

That school should have a curriculum that has lectures by people in the field who come in—Aboriginal artists. It would be a great postgraduate course for people who have studied the history of art or who are artists themselves. Those people then bring a Western knowledge to art and they start to learn, whether they are an Indigenous person or a non-Indigenous person—they have an art background. A specific postgraduate course could be set up to bring in lecturers and programs from people all over the country.⁴³

4.30 He concluded with the comment that there may need to be 'a sort of standard before you go and work in an arts centre—you actually go out into the field before you get a job and work in them for a while'.⁴⁴ There was also support for on-the-job training. In this regard, it is worth noting that peak bodies such as Desart do provide some training and materials.⁴⁵ The issues include finding the time or money for staff to attend training; the extensiveness of training; and whether it sufficiently covers the range of necessary skills. The committee recognises the particular importance of training issues and this is addressed further in chapter seven.

Recommendation 2

4.31 The committee recommends that, to increase the skills base of art centre managers and prospective managers, DCITA, in conjunction with DEST, initiate discussions with selected tertiary institutions on the feasibility of introducing courses on art centre management and cross-cultural issues.

Staff retention

4.32 Staff turnover is a problem faced by services generally in rural and remote areas, but is a particular problem for art centres, especially in remote areas. The turnover of staff, and particularly the manager:

42 Mr Brian Tucker Accounting, *Submission 12*, p. 7.

43 Mr Tony Oliver, *Committee Hansard*, 19 February 2007, p. 46.

44 Mr Tony Oliver, *Committee Hansard*, 19 February 2007, p. 46.

45 See for example the training book they submitted to the committee: Desart, *Submission 49*, Attachment 2.

is one of the biggest problems facing Art Centres. Two to five years would be the norm, six months not uncommon, and over ten years, rare. In an industry (the arts) noted for its high burnout rate, the position of Art Centre Manager leads the field.⁴⁶

4.33 This was a view shared by Mr Tony Oliver who told the committee:

People burn out so quickly. Usually it is a three-year cycle. People come up with great spirit and idealism but by the time they actually learn everything they are exhausted and they are ready for the next lot to come in. Part of the secret is continuity—keeping that experience in the arts centre, giving longevity to that knowledge and actually having the funding there for that person that has that knowledge to be able to train other people. Continuity is important for any culture. The longer we know someone, the easier it is and trust develops.⁴⁷

4.34 The WA Department of Culture submitted that strategies:

to address staff retention issues amongst art centres and long-term strategies to ensure the employment of Indigenous art centre staff will contribute to the sustainability of art centres.⁴⁸

4.35 There is a widespread consensus amongst consultants and stakeholders that both people and materials in the sector are overstretched. The committee received few first-hand accounts from individual artists and art centre staff amongst its submissions, but those that arrived were clear:

I look after about 87 artists mostly women but I have also tried to include the many men on the community with the carving of traditional weapons and artifacts. We make occasional visits out into country hunting, to keep up the morale of the community. I make and prepare all the stretches used to paint on, from raw linen. I supply all the materials used in the production of fine art; I organize our exhibitions both at home and overseas, write the essays, produce the certificates of authenticity and the biographies, answer our many emails, keep our web site up to date. Often I feel more like a community social worker than an art coordinator...

I am tired and worn out and emotionally drained having to continually step up to the mark, now having built up the reputation of the artists and the considerable value of their paintings the tide of dealers and carpetbaggers waiting to profit for themselves is growing every day...

Sadly having reached my end I recognize the need to look after my own family, and myself, the personal cost has been far greater than I ever imagined, as have been the rewards.⁴⁹

46 Mr Brian Tucker Accounting, *Submission 12*, p. 7.

47 Mr Tony Oliver, *Committee Hansard*, 19 February 2007, p. 46.

48 WA Department of Culture and the Arts, *Submission 18*, pp 4–5.

49 Mr Narayan Kozeluh, Art coordinator for The Artists of Ampilatwatja, *Submission 20*.

4.36 The Desart survey showed many staff planned to leave or take a break, often citing workloads and the limitations of living in remote communities.⁵⁰ The pressures on staff can lead to issues with the capacity of art centres to operate effectively. This can lead to questions about the viability of operations. At the same time, people such as Ms Jennifer Herd, who has provided education in the sector for some years, have argued that 'remoteness should not be the measure by which rules and guidelines on financial support are made'.⁵¹

Infrastructure pressures

4.37 While art centres face many challenges, there is little doubt that physical infrastructure deficiencies appear to be the greatest. The committee received considerable evidence suggesting art centre infrastructure is over-stretched and getting rundown, as are the staff working in the centres.

4.38 The WA Department of Culture and the Arts submitted that within that state:

many communities currently serviced by art centres have considerable infrastructure needs, including, but not limited to, inadequate housing facilities for art centre staff and/or inadequate facilities within the art centre including limited storage facilities, limited office space, limited access to wet areas, IT systems, limited capacity to preserve and/or exhibit collections and inadequate temperature control systems. [And:]

- There is a growing demand for art centres or arts enterprise models and a number of communities with no access to these services at present. It is likely that the demand for more art centres in Western Australia will increase, with current demand exceeding current available funding.
- General infrastructure needs, particularly in remote communities, are further exacerbated by broader community infrastructure issues (e.g. closure of airline services, difficulties in accessing on-line services).
- Infrastructure requirements for artists who do not access art centres should also be considered with an emphasis on studio spaces where independent artists can make work. Artists in residence facilities in metropolitan and regional centres are also an important means for artists to develop good practice while engaging with communities.⁵²

4.39 There are numerous indicators making a case for an expanded funding stream for art centres. Departmental figures show extremely strong demand for the limited

50 Felicity Wright, *The Art and Craft Centre Story*, vol. 1 (Report), ATSIIC, Canberra, 1999, p. 211.

51 Ms Jennifer Herd, *Submission 47*, p. 2.

52 WA Department of Culture and the Arts, *Submission 18*, pp 4–5.

finds available, suggesting a lot more could be done if resources were available. In 2006–07 DCITA received over \$14 million worth of applications for less than \$5.5 million of funds, despite informing applicants of the limited ability to fund capital works.⁵³ This is consistent with the fact that the sector seems to have grown rapidly, yet the funding to support it has not.

4.40 The extent of infrastructure need is even clearer when DCITA's data on capital funding requests are examined. The department has received over \$21 million in applications for infrastructure assistance in the last three funding rounds. This excludes identified needs that did not result in formal funding bids. DCITA was only able to fund \$3 million of these funding bids. Furthermore, DCITA pointed out:

Applicants to the NACIS program are not likely to seek substantial funds for capital items as they are aware that NACIS funds are limited and requests for operational support (to cover art centre salaries, for example) often present the most pressing need.⁵⁴

4.41 Often arts centres located in remote communities are a significant employer of Aboriginal people who work as Arts Workers:

This is why Arts Centres in remote communities are crucial to the life and economy of communities. Arts Centres need the support of the government through efficient funding programs. Arts Centres also need to have proper infrastructures to service artists and this should be supported by the government to allow arts centres to grow and service in professional manners the artists it represents.⁵⁵

4.42 The Western Australian Department of Culture and the Arts noted that for a small level of government investment, art centres return enormous social, cultural and economic benefits. However:

the costs and challenges of running a remote area business are enormous. Available funding for art centres has remained almost static over the previous 12 years. The current DCITA funding program that offers core operational funding to the great majority of art centres (NACISS) has national funding of \$4 million, unchanged since the mid 1990s and despite a more-than-doubling of art centres operating.⁵⁶

4.43 Ms Belinda Scott, an arts centre staff member, expressed her concern at the levels of funding to artists and art centres, stating that:

There ought to be more money for projects and programmes to be delivered direct to Indigenous artists. Since ATSIC, and now DCITA have taken over the operational funding for Art Centres, the emphasis is on economic

53 DCITA, *Submission 50*, p. 7.

54 DCITA Answers to questions on notice, 10 April 2007 (received 24 May 2007).

55 Maningrida Arts & Culture, *Submission 51*, p. 2.

56 WA Department of Culture and the Arts, *Submission 18*, p. 3.

outcomes and other such performance indicators. The “money story” has become the driving imperative. Bula’bula Arts Aboriginal Corporation, by virtue of its constitution is a not-for-profit organisation, with any surplus monies (beyond that held in trust) to be returned to its members. That is, in being driven by the push to profit, the nature and services provided by BAAC are being dictated by government and no longer by the members, nor the Constitution.⁵⁷

4.44 Professor Jon Altman observed that 'the stagnation in operational funding has diverted attention from the capital funding needs of art centres for physical infrastructure, including art centre buildings and staff housing'.⁵⁸

Staff accommodation

4.45 There was a consistent message that housing for art centre staff is a problem in communities where housing generally is acutely overcrowded and scarce.⁵⁹ This is exacerbated by the fact, as one submitter pointed out, that art centre staff will themselves always put money into the art centre ahead of their own housing.⁶⁰

4.46 Another submitter was of the view that:

In the long run, a successful Art Centre with happy artists will only happen if there is competent Art Centre staff, and sooner or later, accommodation will be a factor, either because there is simply no accommodation for additional needed staff, or because the available accommodation has deteriorated to the point that it is uninhabitable.⁶¹

4.47 The committee heard many stories about the inadequacy of accommodation, and this is reflected in Desart's 2005 assessment of the infrastructure needs of the sector, in which housing features prominently (see also below).⁶² Accommodation is very scarce in many remote centres, and art centre staff may be reluctant to advocate for their housing needs, particularly when many Indigenous locals are living in overcrowded conditions. In these circumstances, it is possible that consideration would have to be given to factoring in housing as an essential part of any grants for infrastructure improvements for art centres. Otherwise there is a risk of having better art centre facilities, but no ability to attract or retain staff to keep them operating.

57 Ms Belinda Scott, *Submission 1*, pp 3–4.

58 Professor Jon Altman, 'Brokering Aboriginal Art: A Critical Perspective on Marketing, Institutions and the State', Kenneth Myer Lecture in Arts and Entertainment Management, 7 April 2005, Deakin University, Geelong, p. 14.

59 See for example Mr Brian Tucker, *Submission 12*.

60 Mr Brian Tucker, *Submission 12*, p. 5.

61 Brian Tucker Accounting, *Submission 12*, p. 5.

62 Desart, *Submission 49*, Attachment 1.

The challenge of infrastructure funding

4.48 The poor physical state of many art centres⁶³ and the lack of funds available for the repair and installation of art centre infrastructure⁶⁴ are factors which have the potential to undermine the continued success of the Indigenous visual art and crafts sector. Lack of infrastructure funding is not only undermining the arts centres themselves, but also putting arts centre staff under extra stress contributing to the sector's high staff turnover. In many cases, staff do not have adequate facilities⁶⁵ and in one case a staff member was asked to sleep outdoors.⁶⁶

4.49 Art centre infrastructure is expensive, mainly due to the remoteness of Indigenous communities. The cost of freight material to these communities is high, and access to qualified builders, materials and skilled tradespersons is not assured.⁶⁷

4.50 Both Desart and ANKAAA produced detailed analysis of the sector's infrastructure needs. Desart, in conjunction with a number of submissions, believe that there is an urgent need for capital works funding for operating facilities, staff housing and for vehicles.⁶⁸ In 2005, they estimated that Desart member art centres required approximately \$7 million for capital works, and that compared to other facilities such as schools, art centres are ignored.⁶⁹ The committee noted that even that figure may have been an underestimate, as it appeared to include low estimates for the cost of housing in particular.

4.51 ANKAAA identified that the majority of art centre building and facility needs were roofing, storage, housing for staff and general workspaces. These basic needs impact on the art centres' future growth.⁷⁰ This is particularly true in terms of attracting and retaining qualified and committed art centre staff. In some communities there is no housing available for art centre managers.⁷¹ Lack of reliable vehicles is also part of the infrastructure question, and many art centres lack transport – an essential factor is getting sold artwork to airports and other transport hubs.⁷²

63 Desart, *Submission 49*, p. 16.

64 Queensland Department of the Premier and Cabinet, *Submission 58*, p. 18; Belinda Scott, *Submission 1*, p. 3; Creative Economy, *Submission 8*, p. 4.

65 ANKAAA, *Submission 63*, p. 11.

66 Desart, *Submission 49*, p. 16.

67 ANKAAA, *Submission 63*, p. 12.

68 Desart, Central Australian Aboriginal Art Centres, Physical Infrastructure Needs Assessment (Facilities and Housing), November 2005, p. 4. (Attachment to Desart *Submission 49*.)

69 Desart, Central Australian Aboriginal Art Centres, Physical Infrastructure Needs Assessment (Facilities and Housing), November 2005, p. 4.

70 ANKAAA, *Submission 63*, p. 11.

71 ANKAAA, *Submission 63*, p. 11.

72 ANKAAA, *Submission 63*, p. 12.

4.52 In terms of funding sources there are Commonwealth funding initiatives, but Desart imply that they are disparate and lack coordination:

Since the demise of ATSSIS, there is no dedicated Federal funding stream available to Art Centres for the purpose of maintenance, refurbishment, extensions or construction of new facilities or housing. In the past some funds have been made available through the NACIS and RACS programs, usually when there was an available surplus after operating funds had been distributed.⁷³

4.53 While the NACIS program provided almost \$5.5 million during 2006-2007 for sixty-six proposals, most of the funding was for the operational costs of art centres, often through supporting salaries for art centre coordinators – the program itself is not specifically designed for infrastructure funding.⁷⁴

4.54 There are, however, other funding programs. Commencing in 2004-05 a DCITA initiative provided 'special initiative' funding of \$4 million over four years, and seven projects to fund art centre facilities have been funded through this initiative.⁷⁵ Further funds were made available in 2005-06, and the latest round of applications was decided in January 2007. Final funding for the initiative is due to expire in 2007-2008.⁷⁶

4.55 The Department of Transport and Regional Services (DoTARS) administers the Regional Partnerships program. The Regional Partnerships program can provide funding for specific individual projects that meet one or more of the following objectives:

- stimulate growth in regions by providing more opportunities for economic and social participation;
- improve access to services in a cost effective and sustainable way, particularly for those communities in regional Australia with a population of less than 5000;
- support planning that assists communities to identify and explore opportunities and to develop strategies that result in direct action; and
- help communities make structural adjustments in regions affected by major economic, social or environmental change.⁷⁷

73 Desart, Central Australian Aboriginal Art Centres, Physical Infrastructure Needs Assessment (Facilities and Housing), November 2005, p. 7 (Attachment to Desart *Submission 49*).

74 DCITA, *Submission 50*, p. 6.

75 Desart, Central Australian Aboriginal Art Centres, Physical Infrastructure Needs Assessment (Facilities and Housing), November 2005, p. 7 (Attachment to Desart *Submission 49*).

76 DCITA, *Submission 50*, p. 9.

77 DoTARS correspondence to the Committee, 20 April 2007.

4.56 Since the Regional Partnerships program commenced in July 2003, there have been 14 projects, at a cost of \$2.92 million (GST inclusive), approved for funding for Indigenous art centre infrastructure. The program as a whole has a budget of approximately \$68 million for financial year 2007-2008.⁷⁸

4.57 Desart compiled a list of infrastructure funding sources from the States' and Territories' funding sources. They argued that, while it varies, there are currently few funding sources available to art centres to fund capital works projects:

Partnership funding

Of those funding sources that may be available to Art Centres the majority are 'partnership' funding arrangements that require at least two and in major projects up to ten or more different partners to participate. One recent example: In order to raise funds for a new Art Centre building Mowanjum Artists Spirit of Wandjina Aboriginal Corporation needed contributions from ten different funding sources, a major logistic, documentation and lobbying exercise.

Western Australia

In WA, more capital works funds are available through various sources including a number of Indigenous programs and WA Lotteries. Desart member Art Centres are strongly supported by two advocates in their fund-raising efforts. This includes support from the Ngaanyatjarra Regional Arts and the WA Department of Industry and Resources, Office of Aboriginal Economic Development. Staff in these two organisations assist to identify funding sources and often involve themselves in the community consultations required, filling out applications and lobbying very effectively on behalf of Art Centres.

South Australia

In SA this assistance and lobbying role is also undertaken by KU Arts which has been successful in supporting Art Centres to obtain funds for capital works projects both for new facilities (Minymaku house) and small project (Mimli Maku Art Centre upgrade).

Northern Territory

In the Northern Territory there appears to be NO access to Territory capital works funds, thus making it very difficult to access any 'partnership' funding. To date Arts NT has not provided any assistance or support for Art Centres seeking capital works funding; and has stated categorically that it will not make capital works funds available. While the lack of provision of funds is understandable in the context of the small revenue base, the lack of advice and service support is disappointing.⁷⁹

78 DoTARS correspondence to the Committee, 20 April 2007.

79 Desart, Central Australian Aboriginal Art Centres, Physical Infrastructure Needs Assessment (Facilities and Housing), November 2005, p. 6. . (Attachment to Desart *Submission 49*.)

Infrastructure funding in the Northern Territory: a job for the Aboriginal Benefits Account?

4.58 Desart's report on infrastructure needs emphasises the difficulty in locating sources of infrastructure money, particularly in the Northern Territory. One possible source could be the Aboriginal Benefits Account (ABA) – a source of funding that Desart recommended in its submission.⁸⁰ In response to a press release by Minister Vanstone on 22 September 2004, Desart commented:

Desart has been advised that there are bilateral discussions about the possibility of some \$6 million being made available from the Aboriginal Benefit Account, and that this \$6 million might be put towards capital works funding for Art Centres, providing the Trustees of the Fund approve the use of the funds in this way. However Desart is not well-informed about this matter and sources close to the Trustees have advised that to date there is no such approval. [Senator] Vanstone's press release makes no mention of the specific purpose for any such funds.

Should \$6 million in capital works funding be distributed to Art Centres right across the Northern Territory, to both ANKAAA and Desart members, this amount would most likely meet the identified need in the NT for \$2.2 million. This would be an excellent outcome for Central Australian Art Centres within the NT.⁸¹

4.59 The ABA is a Special Account of the Australian Government established for the receipt of statutory royalty equivalent monies generated from mining on Aboriginal land in the Northern Territory, and the distribution of these monies. The ABA is administered by the Office of Indigenous Policy Coordination (OIPC) which coordinates a whole-of-government approach to programs and services for Indigenous Australians. Part of the Department of Families, Community Services and Indigenous Affairs, OIPC has had a central role in the Australian Government's arrangements in Indigenous affairs since 1 July 2004.⁸²

4.60 The ABA is administered by the OIPC in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976* (the ALRA), and is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. Under subsection 64(4) of the ALRA, the ABA is able to make beneficial payments to Aboriginal people in the NT only, as directed by the Minister for Families,

80 Desart, *Submission 49*, Recommendation 3, “Both the Commonwealth Government and the NT Government should strongly pursue the release of Aboriginal Benefit Account funds and make any such funds available for capital works in NT Art Centres”, p. 17.

81 Desart, Central Australian Aboriginal Art Centres, Physical Infrastructure Needs Assessment (Facilities and Housing), November 2005, p. 7. (Attachment to Desart *Submission 49*.)

82 Office of Indigenous Policy Coordination Website, <http://oipc.gov.au/>, accessed 4 April 2007.

Community Services and Indigenous Affairs.⁸³ Those seeking funding from the ABA under sub-section 64(4) are required to fill out an Expression of Interest form available from the OIPC website.⁸⁴ The Australian Government aims to target expenditure so that it contributes to creating more social and economic benefits for Indigenous Territorians. Priority funding areas are:

- scholarship and leadership;
- community enhancement;
- small business;
- major economic initiatives;
- land and sea management; and
- ceremonial and funeral.

4.61 The committee recognises that, even should the ABA become a source of support to art centres for development, it will always have its limitations. It will always face competing demands from many different types of funding requests; it will only be a viable source for as long as mining royalties are forthcoming; and, crucially, it is only relevant to the Northern Territory.

4.62 Nevertheless, providing infrastructure funding from the ABA has its attractions. First, art centre infrastructure fits several of the listed criteria for use of ABA funds. Second, infrastructure construction, and the positive contribution it makes to Indigenous art, contributes to Indigenous financial independence. Finally, it is particularly appropriate as arts infrastructure funding is particularly scarce in the Northern Territory (compared, for example, to Western Australia). The committee notes that the Commonwealth has already indicated its support for the release of funds from the ABA for this purpose.⁸⁵

83 Office of Indigenous Policy Coordination Website, <http://oipc.gov.au/programs/AboriginalsBenefitAccountNT.asp>, accessed 4 April 2007. In relation to sub-section 64(4) payments, the Minister is advised by the fifteen person ABA Advisory Committee. Its Chairperson, currently Ms Miriam Rose Baumann AM, is appointed by the Minister. Ms Baumann is also a member of the National Indigenous Council. The fourteen other members are elected by the four NT land councils established under the ALRA; the Northern Land Council; Central Land Council; Tiwi Land Council; and the Anindilyakwa Land Council.

84 Office of Indigenous Policy Coordination Website, <http://oipc.gov.au/programs/documents/ABAform.pdf>, accessed 4 April 2007.

85 Senator Amanda Vanstone, 'Coalition increases support for Indigenous art', Media Release VPS 571.04, 22 September 2004. See also Schedule 2.2 to the Overarching Agreement on Indigenous Affairs Between the Commonwealth of Australia and the Northern Territory of Australia 2005–2010, <http://www.nt.gov.au/dcm/people/pdf/20050406/arts.pdf>, accessed May 2007.

Recommendation 3

4.63 The committee recommends that DCITA, in co-operation with the Office of Indigenous Policy Coordination, ensure that art centres in the Northern Territory are aware of opportunities to apply for funding from the Aboriginal Benefits Account, 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.

Conclusion

4.64 The Commonwealth's Indigenous Art Centres Strategy and Action Plan, released in 2003 and developed in cooperation with the Australia Council and the former Aboriginal and Torres Strait Islander Commission (ATSIC), sets funding for art centre infrastructure as an action to be implemented as part of its 'community capacity and maintenance of culture' key result area.⁸⁶

4.65 Nonetheless, there appears to be no coordinated approach to funding art centre infrastructure. What resources are available are brought together from existing but disparate programs, rather than a specific dedicated fund. Given the importance of the issue as identified by the terms of reference for the inquiry, the committee considers a more direct approach to funding art centre infrastructure would now be timely.

Recommendation 4

4.66 The committee recommends that the Commonwealth establish a new infrastructure fund to assist Indigenous visual arts and craft; that this fund complement existing NACIS program funding; that this infrastructure fund be for a sum of the order of \$25 million, made available over a period of five years; and that the fund be administered by DCITA.

4.67 The committee noted that the amount of funding available through government Indigenous art programs has not kept pace the expansion of the industry, or with the proliferation of artistic initiatives in Indigenous communities.

4.68 This is not inherently a problem: economic success can mean independence from any need for government support. The committee heard first-hand from two major Indigenous-owned and controlled private initiatives, Papunya Tula Artists and Jirrawun Arts Corporation. Both of these organisations currently require no government support, while delivering significant benefits to their communities. The committee acknowledges and applauds the success of Indigenous art ventures such as these, and an understanding of their histories can help identify potential pathways for success of Indigenous art businesses.

86 'Pursue funding for capital works such as the construction of new buildings and upgrade of existing facilities'; DCITA, Aboriginal and Torres Strait Islander Services and the Australia Council, *Indigenous Art Centres Strategy and Action Plan*, section 5.

4.69 Papunya is a settlement 240 kilometres north-west of Alice Springs. The Papunya Tula Art Movement began in 1971:

when a school teacher, Geoffrey Bardon, encouraged some of the men to paint a blank school wall. The murals sparked off tremendous interest in the community and soon many men started painting. In 1972 the artists successfully established their own company.⁸⁷

4.70 The movement – and the organisation – were born of a combination of the drive and artistic talent of the people of Papunya, and the assistance of teachers and other advisors, who helped them to create an organisation that would get their art to markets, and ensure that income was returned to the artists. The ensuing years saw the organisation receive a range of government assistance while its staff worked hard to develop the careers and reputations of the artists. Art advisors who assisted Papunya Tula were frequently either government employees or funded by the public sector.⁸⁸ There was support from the Australia Council, the Commonwealth's Office of Aboriginal Affairs and the Aboriginal Arts Board.⁸⁹ The Arts Board at one stage employed seventeen advisors working with Indigenous artists supporting the creation and marketing of art works, some of whom would have worked with Papunya Tula.⁹⁰ Anthropologist Fred Myers indicates that during the mid 1970s 'Arts Board grants were the lifeblood of the co-operative. Not only did such grants fund [the art advisor's] position, but the Arts Board and Aboriginal Arts and Crafts were the principal buyers of the paintings'.⁹¹

4.71 Papunya Tula had benefited from relatively early recognition and support from key players in the art sector. It has also had stable and skilled staff, such as Paul Sweeney, who has worked for Papunya Tula for ten years – much longer than typical for an art centre coordinator.⁹² The committee is aware that there is a range of views about how art centres should do business, but it appears clear that one of the secrets to Papunya Tula's commercial success has been its aggressive and disciplined approach to the market, as well as its careful nurturing of long-term relationships with artists.

4.72 A group of artists of the east Kimberley are the owners of the successful enterprise Jirrawun Arts Corporation. The business includes painters who are now some of Australia's best known artists, such as Paddy Bedford and Freddy Timms. The idea for Jirrawun arose from a meeting in Melbourne between non-Indigenous

87 Papunya Tula Artists web site, *History*, <http://www.papunyatula.com.au/history/>, accessed May 2007.

88 Fred Myers, *Painting Culture*, Duke University Press, Durham, 2002, pp 132–3, 142–3, 150.

89 Fred Myers, *Painting Culture*, Duke University Press, Durham, 2002, p. 132.

90 Nicolas Peterson, 'Aboriginal Arts and Crafts Pty Ltd: A Brief History', in P Loveday and P Cooke (eds), *Aboriginal Arts and Crafts and the Market*, Australian National University North Australia Research Unit, Darwin, 1983, p. 64.

91 Fred Myers, *Painting Culture*, Duke University Press, Durham, 2002, p. 155.

92 Mr Paul Sweeney, Papunya Tula Artists, *Committee Hansard*, 21 February 2007, p. 5.

gallerist Tony Oliver and artist Freddy Timms, in which they realised a way needed to be found to ensure artists had appropriate control over their work and their economic future.⁹³ Jirrawun was registered as an Aboriginal Corporation.⁹⁴ It has benefited from non-Indigenous expertise on its board, and from cultivating corporate backing as it has developed, including from a legal firm, accountants, and the Argyle Diamond Mine's owners.⁹⁵ It continues to have a board that combines Indigenous artists and non-Indigenous specialists and backers, while remaining Indigenous owned and controlled. Its structure has evolved along with the artists' profiles and needs, with its structure changing in 2004, and with a Cultural Fund as part of the operations attracting tax deductible status.⁹⁶

4.73 While Jirrawun has succeeded with corporate support, the art of this region also evolved out of earlier art centre programs and the perspicacious recognition and promotion of the art by gallerist and dealer Mary Macha.⁹⁷ There are many artists in the region, some working through Jirrawun, others through art centres and local dealers. Much of this movement was fostered by the public and corporate funding support for Waringarri Artists, an art centre that for many years supported the artists of Warmun/Turkey Creek, including artists who went on to form the Jirrawun group. The funding of Waringarri allowed its staff to travel to communities encouraging the development of art, distributing materials, and collecting works for sale. As with Papunya, the Warmun artists benefited from long-term and committee art centre workers including Kevin Kelly, who worked with Waringarri for five years in the 1990s and has a continuing relationship with artists and the sector in the local area, spanning some 15 years.

4.74 Both Jirrawun and Papunya Tula are grounded in tremendous artistic talent, but also in the skills of those assisting them as businesses. As gallerist Freddie Mora noted, 'you need great artists and management'.⁹⁸ The committee recognises it was a long road for each organisation to economic independence. For Papunya Tula, it was over twenty years,⁹⁹ while for Jirrawun it was a decade.¹⁰⁰ In both cases it took many

93 Jeremy Eccles, 'Jirrawun: A Unique Model for Aboriginal Art', *Art & Australia*, vol. 44, no. 1, 2006, p. 89.

94 Marcia Langton, 'Goovoomji's World', in Linda Michael (ed.), *Paddy Bedford*, Museum of Contemporary Art, Sydney, 2006, p. 57.

95 Marcia Langton, 'Goovoomji's World', in Linda Michael (ed.), *Paddy Bedford*, Museum of Contemporary Art, Sydney, 2006, p. 58.

96 Marcia Langton, 'Goovoomji's World', in Linda Michael (ed.), *Paddy Bedford*, Museum of Contemporary Art, Sydney, 2006, p. 59.

97 Kim Ackerman, 'Rover Thomas', *Artlink*, vol. 20, no. 1; Rover Thoms Joolama, Artist biography, National Gallery of Victoria, http://www.ngv.vic.gov.au/rover_queenie/rover.html, accessed May 2007.

98 Quoted in Jeremy Eccles, 'Jirrawun: A Unique Model for Aboriginal Art', *Art & Australia*, vol. 44, no. 1, 2006, p. 83.

99 Mr Paul Sweeney, Papunya Tula Artists, *Committee Hansard*, 21 February 2007, p. 5.

years of development before they were able to reach the secure and profitable positions they now enjoy. Both organisations benefited from significant long-term support from government and corporate programs.

4.75 The evidence before the committee has indicated that programs such as NACIS (explained in chapter 6) have played a significant part in fostering a movement that has provided both cultural and economic benefits to many Indigenous communities. As Professor Altman's research (cited in the previous chapter) has shown, positive economic returns come from investment in this sector. The committee therefore believes there is good evidence to support growth in funding initiatives that will foster the development and maturation of the Indigenous art and craft sector.

4.76 The committee supports programs with the specific aim of identifying art centres that are appropriately situated to be able to make the transition towards greater financial independence. It considers that resources to help them develop the knowledge, capacity, management and infrastructure to enhance their success and make the transition to greater economic independence should be encouraged. DEWR and Indigenous Business Australia operate a number of programs which are outlined in chapter 7.

Recommendation 5

4.77 The committee supports the roles of DEWR and Indigenous Business Australia 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.

Recommendation 6

4.78 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.

Recommendation 7

4.79 The committee recommends that the Commonwealth consult with stakeholders in the industry, particularly Desart 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.¹⁰¹ These standards may include (but not be confined to):

- **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**

100 Arnold Bloch Leibler & Jirrawun Arts Corporation, *Submission 59*, p. 3.

101 On this subject, see in particular Desart, *Submission 49*, pp 24–25.

-
- **training commitments, including financial, management and art education components.**

4.80 The committee also makes other observations relating to government support for art centres in later chapters.

Alice Springs: A special case?

4.81 As part of this inquiry, the committee held a hearing in Alice Springs, and received many submissions from stakeholders in and around that town. Committee members visited several art centres in the area. It became clear that Alice Springs is widely regarded as an area in which some of the most significant issues exist regarding fair treatment of Indigenous artists. It is there that many of the 'carpetbagging' operations are reputed to operate or visit. There is ongoing discussion in the sector about how to tackle this. Some of these issues relating to the integrity of the market are examined further in chapters eight to ten.

4.82 One topic the committee understands has received some discussion has been the possibility of the establishment of an art centre in Alice Springs particularly aimed at catering to Indigenous artists visiting from other places. This could complement the art centres that exist in many of those places and the art centres in Alice Springs that cater for the locals. It could also assist artists who are from parts of the central desert region that have no art centre at all.

4.83 Any such centre could be of enormous benefit in the biggest local Indigenous art market in the country. However it would have significant resource implications, and involve careful negotiation and planning to ensure it did not drain resources from, or cause conflict with, other art centres in the region. For example, the committee was impressed with the early development of Tangentyere Artists, working with artists in the town camps. It would not support an initiative that might have the effect of undermining already existing arrangements such as this. Nor would the committee want to see artists or resources drawn away from art centres in the more remote towns and settlements.

Recommendation 8

4.84 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.

Chapter 5

'Urban' Indigenous art

5.1 The committee recognised two parallel but linked developments in Indigenous art. The Indigenous art of remote central, north and west Australia is a diverse but high profile movement. It is frequently supported by art centres, and art coordinators working in remote communities. Some of the art is produced using traditional materials such as bark and ochre, while much of it is made with modern materials, particularly acrylic paint on canvas. Most of it has strong, explicit ties to traditional Indigenous culture and country.

5.2 There is also another story in Indigenous art. Smaller numbers of artists, but with an equally prominent profile, are working mostly in southern and eastern Australia, often in the major cities. They work in a wide range of media, and their works, as well as being sometimes more politically charged, have more complex, mediated links to Indigenous culture – Brisbane's Fire-Works gallery refers to 'a strong emphasis on the contemporary rather than the ethnographic'.¹ This chapter briefly discusses these mostly urban artists in the context of the broader inquiry.

'Urban' Indigenous art

5.3 There are many Indigenous artists who have grown up, trained or worked in south-eastern Australia, particularly the cities of Brisbane, Sydney and Melbourne. They include some of the country's most successful and well known, such as Bronwyn Bancroft, Richard Bell, Tracey Moffatt, Lin Onus and Michael Riley. Their work is different in nature and background to the art of the central and western deserts, the Kimberley and the Top End. These artists are often referred to as urban Indigenous artists. This is terminology the committee accepts, while recognising that their identity is more complex than that. Bronwyn Bancroft grew up in Tenterfield in northern NSW²; photographer Michael Riley grew up around Dubbo and Moree;³ painter Richard Bell was born in Charleville⁴ and grew up in outback Queensland;⁵ Lin Onus

1 Fire-Works Gallery, About us, <http://www.fireworksgallery.com.au/About.htm>, accessed May 2007.

2 Designer Aboriginals, Biography, <http://www.bronwynbancroft.com/2.html>, accessed April 2007.

3 Ms Brenda Croft, 'Up in the sky, behind the clouds', in Brenda Croft (ed.), Michael Riley: Sights Unseen, National Gallery of Australia, 2006, p. 25.

4 Richard Bell, 'Bell's theorem of Aboriginal art: it's a white thing', Brisbane Institute, 11 November 2003, http://www.brisinst.org.au/resources/brisbane_institute_bell_theorem.html, accessed April 2007.

5 'Bell raiser', *Sydney Morning Herald*, 28 May 2004.

grew up in Melbourne but frequently visited his father's country on the Murray River.⁶ Their art may often be distinguished more by its subject matter, media, and the artists' relationships to contemporary art than by its geography.

5.4 Over 70 per cent of Indigenous Australians live in urban centres.⁷ Art can be just as important to them and to their cultural and economic future as it can be to the Indigenous people of remote northern and Western Australia. The bulk of public support for the arts targeted toward Indigenous Australians has flowed to regional and remote Australia, and as this report shows, the effort has been more than repaid with beautiful art and craft, and the survival and thriving of a culture.

5.5 Mrs Beverly Knight, State Chairman of the Victorian Chapter of the Australian Commercial Galleries Association, highlighted the importance of supporting urban Indigenous artists along with remote ones:

I have read most of the submissions on the website, and the urban or city based Indigenous issues are really just as important. I think you can get very bogged down with the remote communities because they are more in your face, but there are many issues that need to be dealt with in the urban situation as well. There is also a lot of future for urban based Indigenous artists, given the right things.⁸

5.6 The committee was interested in ways in which support is able to be effective in south-eastern Australia, and it is instructive to look at how the work of indigenous artists has developed in that region. There is no common path when it comes to training: some of these artists appeared primarily to be self-taught (Lin Onus, Richard Bell), while others gained training through colleges and universities in cities (Tracy Moffatt, Bronwyn Bancroft),⁹ while others were a bit of both (Michael Riley). The things these artists have in common, however, are striking. They all appeared to have experienced:

- the maintenance of links to their Indigenous culture and heritage, often through family;
- strong mentoring; and

6 Kate Williamson, Lin Onus (1948 - 1996), Art Interview, <http://www.artinterview.com.au/artist-biographies/lin-onus/>, accessed April 2007.

7 Department of the Environment and Heritage web site, *Indigenous Settlements of Australia*, 'Australia: State of the Environment Second Technical Paper Series (Human Settlements), Series 2', Dr Paul Memmott and Mark Moran, Department of the Environment and Heritage, 2001, <http://www.environment.gov.au/soe/techpapers/indigenous/distribution.html>, accessed 15 June 2007.

8 Mrs Beverly Knight, Australian Commercial Galleries Association, *Committee Hansard*, 23 February 2007, p. 3.

9 Girls on film: Tracey Moffatt, http://www.artgallery.wa.gov.au/collections/documents/t_moffatt.pdf, accessed April 2007; Designer Aboriginals, Biography, <http://www.bronwynbancroft.com/2.html>, accessed April 2007.

-
- connection or collaboration with other artists, both Indigenous and non-Indigenous.

Though their environment and art may often seem different to that of northern and Western Australia, these factors appear similar for Indigenous artists across the country.

5.7 There are established and developing Indigenous arts and craft industries in urban and regional centres where artists and support organisations play an important role in bringing greater recognition of the diversity of Indigenous cultures in Australia.¹⁰ In its submission, the Arts Law Centre of Australia noted that Boomalli, the Indigenous artists cooperative, has been operating in Sydney for almost 20 years supporting urban and rural artists from NSW and that there is:

a growing number of independent Indigenous artists achieving artistic and financial success, and although their work is not from a 'traditional' genre, their connection to Indigenous culture is still integral to their work.¹¹

5.8 World Vision Australia's Sydney-based art gallery, Birrung, has been involved in the Indigenous Arts industry for over eight years. The gallery is one of World Vision's projects within its Indigenous (Domestic) Programs department.¹²

5.9 Birrung Gallery represents over 200 Indigenous artists from remote communities in the Northern Territory, West and South Australian regions as well as local urban artists. Surplus generated through sale of art at the gallery is returned to the Indigenous Programs department for expenditure on various initiatives including scholarships for Indigenous students and projects in various states involving issues of health, youth leadership, community development and governance.¹³

5.10 The submission noted that the gallery also conducts a number of projects within the local Sydney Koori community as part of their daily operations, such as establishing a local Indigenous business (Indigenous picture framer) and funding a scholarship scheme for Indigenous students at the University of Sydney, a local public speaking program (Koori Toastmasters) and a youth leadership program.¹⁴

5.11 However, Ms Herd suggested that:

Economic support of Aboriginal artists in urban centres around Queensland has not been given the level of support or attention that more remote communities have not had this point needs to be acknowledged. There is a strong perception that urban artists have more access to art industry

10 Arts Law Centre of Australia, *Submission 46*, p. 5.

11 Arts Law Centre of Australia, *Submission 46*, p. 5.

12 Birrung Gallery, *Submission 3*, p. 1.

13 Birrung Gallery, *Submission 3*, p. 3.

14 Birrung Gallery, *Submission 3*, p. 3.

services. This is not the case, many urban artists lack skill, education, financial means and exhibiting opportunities as do artists in remote centres.

...

There is already the perception that there is less equality when it comes to funding support for Aboriginal artists living and working in the urban centres.¹⁵

5.12 The Queensland University of Technology submission suggested that a comparative evaluation of the capacity and critical issues of urban Indigenous artists and those living in remote communities be undertaken to ascertain if the concerns and issues facing both sets of artists are similar or dramatically different and:

[i]f they differ, are there equivalent policy settings that capture and account for these differences under the rubric, "the Indigenous visual arts sector"?¹⁶

5.13 The committee was disappointed about how little evidence it received about urban Indigenous art and artists, and how these can be fostered. However, it was aware that many of the figures central to Indigenous arts today began their careers or received valuable mentoring through urban Indigenous art organisations such as Boomalli Aboriginal Artists Cooperative in Sydney or the Campfire Group in Brisbane. As well as the artists mentioned above, these include figures such as Brenda Croft (senior curator at the National Gallery of Australia, trained at Sydney College of the Arts and a member of Boomalli) and Hetti Perkins (senior curator at the Art Gallery of NSW, also a Boomalli member).

5.14 The committee did receive some information from Boomalli, as well as a thoughtful submission from Mr Michael Eather, one of the key figures in the Campfire Group, and the director of Fire-Works Gallery in Brisbane.¹⁷ The history of the Campfire Group highlights the importance of collaboration, mentoring and skills development in the nurturing of urban Indigenous art:

For a time [Campfire Group members] shared a studio space with David Paulson in an old Queensland colonial house in Torrington Street in Spring Hill. Paulson had a wealth of knowledge about painting and sculptural technique that he passed on unstintingly. Richard Bell reminisces that 'Uncle Dave' Paulson was like a 'footie coach' who trained the 'team' in valuable skills and barracked for them when they used these skills to 'take the piss out of the white art system'...

The next initiative of Campfire was to convene the first Queensland Indigenous Artists' Conference. Artists here were conscious that the flourishing of a Central Desert art market was assisted by the presence of

15 Ms Jennifer Herd, *Submission 47*, pp. 1, 2.

16 Queensland University of Technology, *Submission 9*, p. 3.

17 Mr Michael Eather, *Submission 88*; see also Fire-Works Gallery, <http://www.fireworksgallery.com.au/Index.htm>, accessed May 2007.

Art and Craft Centres, workshops, advisors and government grants. Queensland Indigenous artists had to get organised...

One offshoot of these conferences was the identification of a need for tertiary education in Indigenous art for Indigenous artists taught by Indigenous artists. Thus began a long community consultation which in 1995 produced Australia's first Bachelor's degree in Contemporary Australian Indigenous Art (BoVACAIA) at the Queensland College of Art, Griffith University, in Brisbane...¹⁸

Mr Michael Eather was similarly emphatic about these issues:

what strikes me as equally important is concept of professional development & training for artists in order to gain the experience needed to cope with the demands of being a active and professional artist. How do we achieve this outside a tertiary or vocational system? Can we achieve this with existing networks?

More-often this knowledge is acquired simply by experience - by trial and error and time spent working within the 'industry'. For artists it seems critical to gain this knowledge and experience as well as the skills needed for making art and then understanding their options for operating within the market place... I believe we need to maximize their skills and understandings, their professional development knowledge and industry awareness if we are to regulate the industry in any shape or form... To move forward we need to take the responsibilities of business management, financial advice and art marketing insights to the coal face and seek the collaborative energies of artists, advisors, agents, gallerists, accountants, secondary market representatives, curators, academics and government monitors.¹⁹

Reports provided by Boomalli highlighted management, governance and funding issues, and the need to manage these effectively to ensure the sustainability of an organisation.²⁰

5.15 In the absence of in-depth evidence, the committee was limited in its analysis and conclusions regarding Indigenous art and craft in major urban centres. However it makes several observations.

5.16 First, the committee recognises that many major funding programs such as the Commonwealth's NACIS scheme (described in the next chapter) are open to

18 George Petelin, 'The history of the Campfire Group', in Michael Eather (ed.), *Shoosh! The History of the Campfire Group*, Institute of Modern Art and Campfire Group, Brisbane, 2005, pp 9–11.

19 Mr Michael Eather, *Submission 88*, p .2.

20 Frank Panucci and Associates, *Report on Boomalli Aboriginal Artists Co-Operative Ltd*, August 2003; Incite Management Group, *Boomalli Aboriginal Artists Co-Operative Ltd Strategic Plan FY203*.

Indigenous art bodies generally. However, it also notes a subtle emphasis on remote areas in much of the documentation and regulation in this area. Examples include:

- The introductory text of the Indigenous Art Centres Strategy and Action Plan, which states in part: 'Indigenous art centres are building capacity, maintaining culture and generating income and employment activities in remote Indigenous communities... [Art centres] play a vital economic role in Indigenous communities – some of the most remote communities in the country'.²¹
- Guidelines for eligibility for grants, such as those from the Australia Council, which are based on requiring proof of Aboriginality from an organisation registered under the *Aboriginal Councils and Associations Act 1976* or similar legislation, or from a Land Council.²² There are relatively few such organisations in south-eastern Australian cities compared to in the bush, even though there may be high numbers of Indigenous people in those cities, potentially creating a barrier to participation by urban artists.

5.17 At every level, it is important that initiatives intended to foster Indigenous art and craft are communicated and promoted appropriately to all relevant stakeholders and prospective artists. Current processes, while commendable in many respects, may be contributing to a subtle bias against access by urban Indigenous artists.

Recommendation 9

5.18 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.

5.19 Second, a large proportion of the retail and display of Indigenous art takes place in south-eastern Australia, and in Sydney and Melbourne in particular. The committee was struck by the silence of most sector participants (with the exception of art centres and their related bodies) on the issue of Indigenous employment in the industry. This was most obvious amongst those organisations that are not Indigenous owned or controlled, and this includes most commercial art galleries, not to mention public art collections. A significant exception was The Rainbow Serpent, which has an Indigenous employment policy for its outlets at Sydney and Brisbane International Airports.²³

5.20 The committee suggests that this is an obvious, and surprisingly neglected, avenue by which the sector could engage urban Indigenous Australians in the visual

21 DCITA, Aboriginal and Torres Strait Islander Services and Australia Council for the Arts, *Indigenous Art Centres Strategy and Action Plan*.

22 Australia Council for the Arts, ATSEA: Grants: Skills and Arts Development, http://www.ozco.gov.au/grants/grants_atsia/skills_and_arts_development/, accessed May 2007.

23 The Rainbow Serpent, *Submission 17*, p. 3.

arts and craft industry. This would be particularly valuable given that marketing, business management and accounting skills are amongst those most needed in the art centre sector of the industry. Employment in city galleries would be one path by which the number of Indigenous Australians with those skills could be increased, while simultaneously bringing them into ongoing contact with artistic activity in Indigenous communities, whether urban or remote.

5.21 The committee considers that commercial art galleries whose business is to a significant degree Indigenous art should, with the funding assistance of their industry associations, the Commonwealth and art centre peak bodies, develop Indigenous employment objectives and plans.

5.22 Finally, the committee can only urge that policymakers give more attention to how Indigenous art can better be fostered in urban settings. It acknowledges Ms Herd's observation that Indigenous people in urban Australia may not have the access to artistic training and resources that may be assumed. The committee was not able on the evidence before it to form a view on how this should be addressed. But with Indigenous art being one of the inspiring success stories for Indigenous Australians, as well as one of Australia's great contributions to the world, more effort should go into encouraging the creation of such art in the cities where most Indigenous people live.

Chapter 6

Existing government funding

6.1 This chapter describes the funding programs managed by the Commonwealth and the states and territories in the Indigenous arts and craft sector. The need for growth funding for Indigenous art programs in general, and infrastructure support in particular, was discussed in chapter 4. This chapter describes the existing programs used for those purposes, and covers other funding issues.

Commonwealth programs

6.2 The main funding to support Indigenous art centres is provided by the Commonwealth through the National Arts and Crafts Industry Support (NACIS) program administered by the Department of Communications, Information Technology and the Arts (DCITA), and two programs administered by the Australia Council through the Aboriginal and Torres Strait Islander Arts Board. Some support is also provided by state and territory governments. Some art centres are funded from their own resources, although this is not the case in most instances.

6.3 DCITA administers three main relevant funding schemes:

- National Arts and Crafts Industry Support (NACIS) program (\$5.6 million in 2006–07) – provides direct funding support to Indigenous art centres and support organisations;
- Indigenous Culture Support (ICS) (formerly the Regional Arts and Culture Support)¹ program (\$6.8 million in 2006–07) – this program is broader than arts and crafts and provides funding support to preserve, develop and promote Indigenous arts and cultures within Indigenous communities; and
- Indigenous visual arts special initiative (IVASI), which provides \$4 million over four years (2004-05 to 2007-08) – provides for the training of emerging Indigenous artists, to upgrade facilities, and to fund specific marketing initiatives. This funding complements the core operational support provided through the NACIS program.

6.4 The NACIS program is the most relevant to the Indigenous visual arts and craft sector. However the ICS program also provides support for some visual arts and craft activities, particularly for activities which focus on maintenance and transfer of cultural skills and knowledge.²

1 The ICS program was called the Regional Arts and Culture Support (RACS) program when it was administered by ATSIC.

2 DCITA, *Submission 50*, p. 3.

6.5 Funding under the NACIS program over the 10 year period from 1995-96 to 2005-06 is provided in the table below.

Table 6.1: Funding under the NACIS program, 1995-96 to 2005-06

	(\$m)
1995-96	4.8
1996-97	3.8
1997-98	4.1
1998-99*	5.8
1999-00	4.7
2000-01*	6.2
2001-02	n.a.
2002-03	4.9
2003-04	4.1
2004-05	4.3
2005-06	4.4

n.a. information not available

* Increase in expenditure attributed to additional funds being provided for one-off projects

Source: DCITA, Correspondence, 14 February 2007.

6.6 DCITA advised the committee that comparable data on funding of the ICS program directed towards activities that have an Indigenous visual arts emphasis is not available due to 'changes in systems over the past 10 years...Detailed analysis would be required to extract this data'.³

6.7 NACIS funding was increased by \$1 million per annum for four years commencing in 2006–07. At the same time an additional \$0.5 million per annum over the same period was allocated for training visual artists to enhance their engagement with the commercial arts market.⁴ These additions were made as a result of the government's decision not to proceed with a resale royalty scheme. Resale royalty issues are discussed further in chapter 12.

6.8 DCITA also provides funding to a range of Indigenous arts-related activities through mainstream arts support programs. Under the Visions of Australia program from 2004-05 to 2006-07, approximately \$517 000 has been provided to seven projects with an Indigenous visual arts component. Under the Festivals Australia program from 1996-97 to 2006-07, approximately \$266 000 has been provided to 16 projects with an Indigenous visual arts focus. Under the Regional Arts Fund from

3 DCITA, *Correspondence*, 14 February 2007.

4 The Hon Phillip Ruddock and Senator the Hon Rod Kemp, 'New support for Australia's visual arts', Budget news release, 9 May 2006.

2004-05 to 2006-07, approximately \$858 000 has been provided for projects with an Indigenous visual arts component.⁵

6.9 In addition, DCITA has provided funding through the Networking the Nation (NTN) and IT Training and Technical Support (ITTTS) programs for a range of information technology and communications activities in remote communities. Under the NTN program, four programs receiving a total of \$1.4 million in funding, had direct connections to Indigenous visual arts.⁶

6.10 The Australia Council manages two relevant schemes:

- The Visual Arts and Craft Strategy (VACS). This delivers \$1.8 million annually to the Indigenous visual arts sector, of which \$845 000 is Australian Government funding. This includes some funding to peak bodies Desert and ANKAAA. VACS is a jointly funded Commonwealth, state and territory government program. Commonwealth funding is contingent on matching funding from state and territory governments. Direct grants are provided to individuals and artist-run programs. Funds are also allocated to contemporary arts organisations, craft and design organisations and a number of programs supporting Indigenous arts infrastructure.⁷
- A further \$3.7 million of Australia Government funding was distributed by the Aboriginal and Torres Strait Islander Arts Board of the Australia Council in 2004–2005. This includes about \$1 million for art centres.⁸

6.11 The Australia Council stated that the value of the Aboriginal and Torres Strait Islander Arts Board (ATSIAB) grants has fallen slightly in real terms since the 1990s.⁹

6.12 The Australia Council indicated that the value of ATSIAB grants going specifically to visual arts and crafts has grown to approximately \$2.7 million in 2005-06. The Australia Council also provides some other support to Indigenous visual

5 Visions of Australia provides funding to eligible organisations to develop and tour exhibitions of Australian cultural material across the country. Festivals Australia provides assistance to Australian regional and community festivals for the presentation of cultural projects. The Regional Arts Fund supports the arts in regional and remote areas in partnership with state and territory regional arts organisations. DCITA, *Correspondence*, 14 February 2007.

6 The NTN program ceased on 30 June 2005 and the ITTTS program will cease on 30 June 2007. See DCITA, *Correspondence*, 14 February 2007.

7 See Australia Council, Visual Arts and Crafts Strategy, www.ozco.gov.au/boards/visual-arts/vacs, accessed may 2007.

8 Australia Council, *Submission 38*, p. 19. Four further years of funding of the VACS initiative at existing funding levels was announced in the 2007–08 budget.

9 Australia Council, *Submission 38*, p. 19.

arts and craft, including some funding for the Visual Arts Board and the Community Cultural Development Board, totalling \$84 000 in 2005–06.¹⁰

6.13 The Commonwealth's Department of Employment and Workplace Relations (DEWR) runs several programs which can support Indigenous visual arts and crafts. It operates several initiatives under the Indigenous Economic Development Strategy (IEDS). These include:

- Structured Training and Employment Projects (STEP)
- Indigenous Small Business Fund (ISBF)
- Indigenous Capital Assistance Scheme (ICAS)
- Indigenous Community Volunteers (ICV)
- New Enterprise Incentive Scheme (NEIS).

These programs are discussed further in chapter 7.

6.14 Both STEP and ISBF are being utilised in partnership with ANKAAA, with funding worth over \$700 000 over several years. This project involves the employment of a business development officer and the formulation and implementation of 'business, strategic, marketing and/or export plans'.¹¹

6.15 In addition to these initiatives, DEWR administers the program which is the largest single employer of Indigenous Australians: the Community Development Employment Projects (CDEP) scheme. DEWR have said that 'around 130 arts activities are currently undertaken by 95 CDEP organisations. These activities can support up to 2100 participants'.¹²

6.16 There are numerous art centres receiving both CDEP funding and DCITA funding for different art activities, and the future of these arrangements is a matter of contention. CDEP labour is often used to support arts activities funded by other government agencies, especially in the case of non-art activities such as the maintenance and operation of arts centres, including retail sales, food preparation and office administration. DEWR has described the use of CDEP labour to support activities funded by other government programs as 'CDEP cross-subsidisation'.¹³ DEWR stated that there are 34 arts activities funded under CDEP that are also supported through other government programs, and these have up to 328 CDEP participants involved.

10 Australia Council, *Correspondence*, received 18 May 2007.

11 DEWR, answer to question on notice 11 April 2007, received 14 May 2007.

12 DEWR, *Submission 66*, p. 8.

13 DEWR, *Submission 66*, p. 8.

6.17 The committee understands that DEWR and other Australian Government agencies:

are currently looking to progress the removal of CDEP cross-subsidisation from a range of Government service delivery areas. The aim is to create real employment, business opportunities and career paths for Indigenous Australians participating in CDEP activities that elsewhere would be real jobs.¹⁴

6.18 The Indigenous art community appears worried that changes to CDEP may undermine capacity to train Indigenous staff, to employ staff and thus to continue the current range of activities. In a sector already generally agreed to be facing infrastructure constraints and having over-worked staff, this is a source of concern.¹⁵ The committee examines aspects of this issue further in chapter 7.

States and territories

6.19 States and territories provide funding through their arts programs. Some appears to be through Indigenous-specific strategies, while other funding appears to be through mainstream arts funding programs. Some jurisdictions provided more comprehensive data to the inquiry than others, and the committee is concerned at the lack of comprehensive data in this area.

Northern Territory

6.20 The Northern Territory Government supports the Indigenous arts industry through its Indigenous arts strategy, *Building Stronger Arts Business* (BSAB). The BSAB includes three elements:

- *Talking Arts Business* – provides for the development of strategic partnerships with Indigenous arts practitioners, the Commonwealth and Territory Government sector organisations to ensure sustainability of the sector;
- *Doing Arts Business* – provides for culturally appropriate services to encourage arts development and provide Indigenous arts practitioners with training and employment in the arts; and
- *Sharing Arts Business* – creates opportunities to promote the Territory's Indigenous arts sector to local, national and international markets.

6.21 The Northern Territory Government has increased its funding to Aboriginal arts since 2001. Prior to that time, funding to Indigenous projects as a proportion of total NT arts sponsorship was 11 per cent (2000-2001); this increased to 16 per cent or

14 DEWR, *Submission 66*, p. 8.

15 Waringarri Aboriginal Arts, *Submission 52*, p. 2; Maningrida Arts and Culture, *Submission 51*, pp 2–4.

\$425 000 in 2001-02. Commitments under the BSAB are currently \$1.09 million per annum.

6.22 Specific Indigenous outcomes under the Visual Arts and Craft Strategy (VACS) are delivered in the Territory through direct funding support to peak Indigenous advocacy and support organisations, Desart and ANKAAA.¹⁶

Queensland

6.23 In Queensland, the Visual Arts and Craft Strategy (VACS) 2004-2007 has a combined Commonwealth and state-funded budget of \$7.4 million (\$4.245 million funded from Queensland). Under VACS, support is provided towards the Indigenous visual arts and craft sector, including:

- Indigenous Art Centres – many Indigenous art centres in Queensland receive annual operational funding through Arts Queensland (via VACS) with funding being supplemented by DCITA or the Torres Strait Regional Authority;
- UMI Arts Ltd – a peak body funded to service 11 Indigenous arts centres in Far North Qld;
- Dreaming Festival 2006 - Arts Qld contributed \$75 000 towards the visual arts and craft component;
- Queensland Indigenous Arts Marketing and Export Agency; and
- Regional Millennium Arts Project – capital infrastructure support has been provided to many Indigenous art centres.

6.24 Other programs include the Arts Centre Pilot Project. This project will focus on four art centres and fund activities related to information technology systems development, and marketing and promotions, with the aim of strengthening the current capability of the art centres. The Indigenous Regional Arts Development Fund (IRADF) is a partnership program between Arts Queensland and Indigenous community councils and communities. Projects are funded to support cultural retention and economic independence. Fifteen Aboriginal councils, community organisations and local councils will participate in IRADF in 2006-07. The annual budget for the program is \$0.5 million.¹⁷

16 Northern Territory Government, *Submission 57*, pp 23–26; See also Desart, *Submission 49*, p. 27.

17 Queensland Government, *Submission 58*, pp 23–24.

Other states

6.25 In Western Australia, the Department of Culture and the Arts, through its Arts Grants Program, supports a range of mechanisms to support artists and organisations, including project funding, annual and multi-year funding. The Department of Industry and Resources, through the Aboriginal Economic Development program, provides support for the establishment and maintenance of arts centres, staffing and system management.¹⁸

6.26 In NSW, Arts NSW through its state-government funded Visual Arts and Craft (VAC) program funds a variety of initiatives relating to Indigenous visual arts, including program costs, projects, artists and strategic initiatives. In 2006, the VAC program funded seven Indigenous visual arts applications, totalling \$163 000.¹⁹ Arts NSW provides some funding to Indigenous arts centres.

6.27 In Victoria, Indigenous art and craft is identified in *Building the Economic Base – the Victorian Government's Indigenous Business Development Strategy 2005-07* as an integral element of a broader Indigenous industry development framework. Under this strategy, Arts Victoria in partnership with the Koori Business Network operates the *Deadly Arts Business* program. The program aims at strengthening the business, marketing and artistic capability of the sector. It promotes exhibitions of Indigenous visual arts, provides skills development and professional development opportunities and provides commissioning and retailing opportunities for Indigenous artists. Arts Victoria does not provide funding to Indigenous arts centres.

6.28 Aboriginal Affairs Victoria operates the Aboriginal Land and Economic Development Program. In 2005-06 the government committed \$9.6 million over three years to establish the program. One project is the establishment of an art gallery featuring Indigenous artists.²⁰

6.29 The committee had some difficulty in establishing the value of, or trends in expenditure on Indigenous arts in some jurisdictions. It wants to emphasise that the additional funding for Indigenous visual arts and craft recommended in this report should be an opportunity for other jurisdictions to continue to build their programs in this important area.

Government funding – issues

6.30 The most frequently recommended action in submissions is increasing funding to art centres, either through increasing their recurrent funding, infrastructure improvement grants, housing assistance or all three. This recommendation did not just appear in the submissions of art centres and their affiliates, but individuals, collectors,

18 WA Department of Culture and the Arts, *Submission 18*, p. 12.

19 Arts NSW, *Submission 53*, pp 12–13.

20 Arts Victoria, *Submission 70*, pp 5–6.

dealers, gallery associations and governments. One submission described the art centre program, in comparison to other industry assistance programs, as 'miniscule'.²¹

6.31 Desart, as with many other submissions, noted that the sector is artistically and culturally sustainable but requires increased funding support. In order to nurture new talent continued investment in the sector is needed through training; exposure to contemporary art practices; quality representation; access to markets; solid sales of art product; and strong industry associations. Desart stated that these factors are reasons the government needs to 'sustain and increase its support for the sector'.²² The committee has in chapter 4 already recommended expansion of the existing NACIS scheme in part to address this.

6.32 Some submissions argued for the consolidation of funding sources. The Northern Territory Government noted, for example, that many art centres are required to approach up to ten different agencies in pursuit of a single project, at substantial cost in terms of time and effort.²³

6.33 Some submissions suggested that there should be greater coordination and/or consolidation of DCITA and the Australia Council funding programs.²⁴ Other evidence pointed, however, to the benefits of maintaining multiple funding sources. Professor Morphy stated that:

I do not think you can contain art within one particular portfolio, because art is something that can be to do with Australian export industries and education, both for Indigenous people and non-Indigenous people. Art is something that clearly is part of the cultural industry as such. Art can be associated with community morale and national, local and regional identity. I think it is wrong to see art as something that is disconnected from society as a whole. There should be multiple funding sources.²⁵

6.34 Submissions also argued for the introduction of triennial funding given that many art centres have a proven history of appropriate financial management. This would ease the administrative burden on art centres and provide a more secure funding stream.²⁶ Triennial funding is also mooted under the bilateral agreement

21 Department of Industry and Resources, Western Australia, *Submission 35*, p. 2.

22 Desart, *Submission 49*, p. 14.

23 Northern Territory Government, *Submission 57*, p. 24.

24 Arts NSW, *Submission 53*, p. 16.

25 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 73.

26 Maningrida Arts and Culture, *Submission 51*, p. 3; ANKAAA, *Submission 63*, p. 14; WA Department of Culture and the Arts, *Submission 18*, p. 12.

between the Commonwealth and the Northern Territory regarding the Indigenous arts sector.²⁷

Recommendation 10

6.35 The committee recommends that DCITA implement triennial operational funding for art centres as an option for projects seeking support under the NACIS program.

6.36 Submissions argued for a whole of government approach to address policy direction, capacity building and future sustainability through partnerships and inter-agency cooperation.²⁸ This is to some extent already implemented, through the existence of Indigenous Coordination Centres and whole-of-government arrangements within the Commonwealth at the ministerial and departmental secretary level.

6.37 Several governments, such as NSW, have advocated strongly for further efforts to be made in this sector. Not all jurisdictions have supplied financial data about their programs that fund Indigenous art, but the NSW program at least appears small compared to the Commonwealth's (\$500 000 over five years versus around \$20 million within NACIS/VACS alone over that same period). Other jurisdictions, particularly the Northern Territory, appear to have more substantial programs.

Conclusion

6.38 The committee believes that there is substantial funding pressure on art centres. As noted in this chapter and chapter 4, the current level of funding is inadequate to meet the current and future demands of the sector. The visual arts sector is an important success story that should be properly resourced as it generates economic, social and cultural benefits to Indigenous artists and wider spin-offs to other sectors and the nation generally. The strengthening of the financial position of art centres will ensure that the sector continues to flourish.

6.39 The NACIS budget has not managed to keep pace with the expansion in the number of art centres.²⁹ One submission noted that:

The current DCITA funding program that offers core operational funding to the great majority of art centres (NACISS) has national funding of \$4 million, unchanged since the mid 1990s and despite a more-than-doubling of art centres operating.³⁰

27 Schedule 2.2 to the Overarching Agreement on Indigenous Affairs Between the Commonwealth of Australia and the Northern Territory of Australia 2005–2010, <http://www.nt.gov.au/dcm/people/pdf/20050406/arts.pdf>, accessed May 2007.

28 ANKAAA, *Submission 63*, pp 14–15; Northern Territory Government, *Submission 57*, pp 24–25; Queensland Government, *Submission 58*, p. 25.

29 Professor Jon Altman, *Submission 11*, p. 7.

30 WA Department of Industry and Resources, *Submission 35*, p. 3.

6.40 This situation has created an environment where program funding has been clawed back from some more successful centres creating a situation where incentives to succeed have been undermined. Art centres need to be recognised as mixed commercial and cultural/social enterprises that will require ongoing support for the foreseeable future and that therefore need to be adequately funded.

6.41 Funding pressure on art centres has resulted in difficulties in relation to the recruitment and retention of staff. Staff 'burnout' and a high turnover of staff positions impacts on the efficient operation of art centres. A significant injection of funds would provide support for staff to receive training and skills development which will in turn improve governance arrangements within art centres.

6.42 The committee believes that art centres are, in the main, efficient enterprises – for a small level of government investment they return enormous social, cultural and economic benefits. However, the costs and challenges of running an art centre, especially in remote areas, are substantial. The committee considers that triennial funding would provide for greater stability in funding arrangements and enable art centres to better plan for the future. As noted previously, most art centres have a history of effective financial management. The committee also believes that improvements in governance arrangements will be assisted where centres have more certainty in funding arrangements.

Chapter 7

Education and training

Introduction

7.1 The importance of education and training was repeatedly raised in both submissions made to the committee and in hearing testimony. Education is often cited as a method of combating various problems evident in the Indigenous visual arts and crafts sector and its importance has been noted in many submissions:

Education is definitely a very strong part of it. Education not only of the people working in the arts centres and the communities; education of the artists themselves in terms of their rights and responsibilities; and also education of the general and buying public especially. That is something that can be conducted through all sorts of means. Education is very important.¹

7.2 Given this perception, this chapter aims to examine issues surrounding:

- education and training of art centre staff;
- education of artists, particularly about their rights and responsibilities; and
- education of buyers, both domestic and international.

7.3 This chapter also examines existing government initiatives and programs which are either being used, or could potentially be used to strengthen education, training and employment outcomes for the Indigenous visual arts industry. This includes a discussion of the Commonwealth Government's Community Development Employment Projects (CDEP) programme.

7.4 Education and training have the potential to strengthen the sector's sustainability and profitability. While results may not be immediate, better resourced and coordinated education and training is a medium to long-term solution to some of the sector's fundamental issues such as effective art centre management and the curtailing of unscrupulous art dealer activities.

Education and training of art centre staff

7.5 The training offered to art centre managers is particularly important given the high turnover of staff, and the disproportionate impact a relatively small increase in resources could have on the sector through providing greater managerial training and support.

1 Mr Wallace Caruana, *Committee Hansard*, 9 February 2007, p. 25.

7.6 The role of the art centre is central to the education and training of managers, artists, and consumers.

The Art Centre has a crucial role in educating both consumer and practitioner. Education needs to be a gentle process in which all participants can slowly absorb knowledge and change. Art Centres do this by acting as a buffer between the highly competitive art market and the cultural environment of “country”. Educating the market is one of the most effective tools against unscrupulous and unethical conduct. However without adequate funding most Art Centres lack the human resources to implement this effectively. Courses at educational facilities, such as Charles Darwin University, that relate to specific Art Centre roles would also be advantageous.²

7.7 Tertiary education and its potential to impact on the art sector is further explored later in the chapter.

Barriers to the education and training of art centre managers

7.8 Lack of education and training for art centre staff has been a constant theme through the submissions and testimonies received by the committee. A typical comment is:

We also need to look at training opportunities for art centre staff. Most art centre managers I know have had no training or no professional development during their time in the art centre industry.³

7.9 The committee met several art centre staff during its inquiry, from both Western Australia and the Northern Territory, and was impressed by their skills, commitment and advocacy. Art centre managers come from a wide variety of sources such as direct from university as art graduates, business managers, practicing artists, social workers or previously experienced art centre managers. While they may be qualified in a particular area – such as art history, or management skills generally, they are unlikely to possess the collection of skills required to successfully manage isolated Indigenous art centres. Knowledge of art, sensitivity to cultural differences, accounting and bookkeeping skills are just some of the many skills art centre managers need. Unfortunately, many do not have all those skills, nor receive access to suitable training. Brian Tucker noted:

In my experience, managers will sometimes have come from a marketing background, often, but not always, in Indigenous art; or they may have been a practicing artist or community cultural development worker; or have a curatorial history, or worked in Indigenous communities as a social worker. Rarely will they have financial management skills, although they may have rudimentary book-keeping experience. Yet all of these skills are required to

2 Cross Cultural Art Exchange, *Submission 16*, p. 3.

3 Ms Apolline Kohen, Arts Director, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 43.

successfully manage an art centre.... [and] there is no training available for this position... Managers learn those skills they do not have on the job and from (often bitter) experience.⁴

7.10 The lack of training, harsh conditions and cultural challenges result in a high turnover of staff, exacerbating the problems. The Australia Council noted:

Not all art centre managers may be good managers, especially with the high turnover of staff in centres nowadays. A successfully run art centre needs superior business, administration and social skills. A survey of art centre coordinators published in 2000 noted that, while the majority already have tertiary qualifications, they still often have significant training needs in general arts administration, book-keeping, business studies, practical art training, linguistics, fine art, marketing, computing, anthropology and Aboriginal studies, particularly in cultural protocols. Considerable support is needed to ensure that these professional development needs are met.⁵

7.11 Education and training for art centre managers is a difficult issue. There are a number of impediments which potentially include inexperience and a lack of understanding of complex and sensitive cultural issues. Many come from metropolitan regions and have never had any contact with Indigenous people. Training before they take up such a position within a community would be of benefit. Arts centre managers also need to be aware of the various codes of best practice relevant to the Indigenous arts industry.⁶ Furthermore, the sheer remoteness of many Indigenous communities makes access to training and materials difficult. Professor Jon Altman observed:

Another aspect of the human resourcing issue is professional development for staff, especially in the areas of business skills, governance and administration. Access to education and training opportunities can be difficult due to the remoteness of many art centres and finding the funds to attend training can be difficult. Access to training (e.g. acquiring skills in new media) for art producers is another issue raised in submissions.⁷

7.12 Given the stress and time commitment required by the job, it would be ideal if art centre managers were given suitable training prior to their placement. It has been suggested that perhaps some form of tertiary certificate course could be constituted to give aspiring art centre managers a suitable background. This would fill a void which currently exists in courses offered by, for example, TAFE.⁸

Training probably needs to be undertaken before they actually get to the arts centre. Once they get to the arts centre they are probably going to be

4 Mr Brian Tucker, *Submission 12*, pp 7-8.

5 Australia Council, *Submission 38*, pp 25-26.

6 Australia Council, *Submission 38*, pp 25-26.

7 Professor Jon Altman, Appendix A, *Submission 11*, p. 16.

8 Ms Lyn Allan, General Manager, Indigenous Arts and Training, DCITA, *Committee Hansard*, 10 April 2007, p. 17.

working 12 hours a day, six days a week, and the time to engage in even online training is going to be limited. It would be nice if some of the state tertiary institutions could establish some form of certificate of arts centre administration or something like that, so that people who had a mind that this was an industry that they wanted to get into—or even young Indigenous people who decided that they wanted to get into this industry—could find a course of training that would be geared specifically to the role that they will be undertaking and that would cover everything from financial issues and computers to photography and database management.⁹

Such training could also be complemented by on-line training.¹⁰

7.13 In 1997, the Queensland Government conducted an inquiry into the Indigenous cultural industry in Queensland.¹¹ It did note that in 1997 there was a number of courses run by TAFE and others by Queensland Government Departments, such as *Cross Cultural Communication and Training*, *Advanced Certificate in Aboriginal and Torres Strait Islander (A&TSI) Community Management*, *Survival Skills for artists*, *Small Business for Aboriginal Artists* to name a few.¹² Many courses relating to Indigenous arts and craft, as well as business administration, continue to be available, but are not necessarily offered as part of a coordinated suite of training for potential or actual art centre managers.

7.14 Such a coordinated approach may be worth consideration. Given the varied and demanding requirements on art centre managers, it should be possible to provide a coordinated program from pre-existing courses to equip potential art centre managers with the requisite skills prior to the take up of their positions. This would require some coordination between existing TAFE courses and those offered by state and territory governments, but given the importance of the positions it would be of great benefit to the managers and the industry as a whole.

7.15 While it is likely to require increased resources, one system which the committee recommends considering is that of 'on-the-job' training, similar perhaps to an apprenticeship. This could complement the vocational studies course discussed above. Through extra funding for both staffing and infrastructure (so as to accommodate the new staff), a system could also be put in place where either an existing or out-going art centre manager, or perhaps a certified and experienced trainer, could spend a transition period with a newly employed art centre manager so as to educate and train the new manager on the specific requirements of that particular art centre and on the Indigenous visual art industry more broadly. A pre-existing

9 Mr Brian Tucker, *Committee Hansard*, 10 April 2007, p. 10.

10 Mr Brian Tucker, *Committee Hansard*, 10 April 2007, p. 13.

11 Sharenne Bell, *Arts, Business, Culture: A research report on an Indigenous cultural history in Queensland business culture*. Arts Queensland, May 1997.

12 Sharenne Bell, *Arts, Business, Culture: A research report on an Indigenous cultural history in Queensland business culture*. Arts Queensland, May 1997, p. 68.

program, such as the Group Training Australian Apprenticeships Targeted Initiatives Programme run by the Department of Education, Science and Training (DEST), may be able to accommodate such an approach without a new program or bureaucracy being established.¹³

Federal government programs

7.16 Apart from vocational training for art centre managers, there are Federal Government programs available to assist with education and training for the Indigenous visual art industry, as well as skills development through employment experience. Funding of training activities is potentially consistent with the NACIS scheme guidelines, however, as noted in chapter six, there is already extremely heavy demand on NACIS funding. Support is also available for training of young and emerging Indigenous artists and art centre workers under DCITA's Indigenous Visual Arts Special Initiative program, which has experienced less heavy demand. However, the committee also notes this initiative is due to conclude in 2007-08.¹⁴

7.17 The Australia Business Arts Foundation delivers business skills development training. It has received \$0.5 million to develop a 'tailored training package for individual visual artists to enhance their engagement with the commercial arts market'.¹⁵ Given the large proportion of Indigenous artists working through art centres and organisations rather than individually, and that the training is not Indigenous-specific, it may be of limited relevance to this industry.

7.18 The Department of Employment and Workplace Relations (DEWR) has a series of programs which are designed to provide education and training support not only to the Indigenous art and crafts sector, but also more broadly. Below is a selection of programs DEWR outlined in its submission which is available to provide training and education to the Indigenous art sector.

Structured Training and Employment Projects (STEP) provide flexible financial assistance for projects that offer employment and structured training. This can be in the form of on-the-job training or support for apprenticeships and traineeships to meet employers needs and must lead to lasting employment for Indigenous job seekers.

The nature of employers in the arts and craft sector, particularly the high proportion of very small businesses or sole traders, has limited the scope of

13 Department of Education, Science and Training (DEST) website, http://www.grouptraining.dest.gov.au/targeted_initiatives.htm, accessed 9 May 2007. "The objective of the Programme is to enable Group Training Organisations to generate quality Australian Apprenticeship opportunities in priority areas that would not otherwise happen, as well as strengthen the capacity of the group training sector to generate Australian Apprenticeships in difficult, challenging or under serviced markets which contributes to the establishment of a sustainable Australian Apprenticeships market."

14 DCITA, Answers to questions on notice, 10 April 2007, received 24 May 2007.

15 DCITA, Answers to questions on notice, 10 April 2007, received 24 May 2007.

STEP projects in the sector. For example, STEP funding cannot be used to fund artists directly. Artists are generally self-employed rather than employees of a business. Despite this, STEP has been used successfully to support projects in the arts sector.

The Indigenous Small Business Fund (ISBF) offers funding to incorporated Indigenous organisations to assist Indigenous people to learn about business, develop good business skills and expand their businesses. Assistance is available for activities such as feasibility studies, business planning, marketing, business mentors and other facilitative projects. Indigenous organisations looking at developing and/or expanding their enterprises are eligible to apply for ISBF funding.

Across Australia, ISBF funding is assisting in implementing business plans and engaging business expertise to transform art centres and CDEP enterprises into commercial operations such as Koori Artefact Production, Uambi CDEP Aboriginal Corporation, Cooragan Arts and Craft Centre and the Aboriginal Centre for Performing Arts.

The Indigenous Capital Assistance Scheme (ICAS) assists in increasing Indigenous employment and Indigenous owned businesses by improving the access of Indigenous businesses to commercial finance and culturally appropriate professional support and mentoring. Flexible assistance packages are available over three years to help stimulate Indigenous business development, with loans ranging from \$50 000 - \$500 000. A key feature is the provision of interest rate subsidies to ease debt servicing requirements for Indigenous businesses. The programme is delivered in partnership with the Westpac Banking Corporation across Australia... ICAS has been able to assist two arts businesses in Northern Australia that combine tourism, an art gallery and retailing of Indigenous arts and crafts.

Indigenous Community Volunteers (ICV) links skilled volunteers with communities that have asked for expert assistance in areas such as business, financial management and trades such as construction or plumbing. Since 2001, ICV has provided volunteers for up to three months to support and assist organisations including arts centres and artists.

The New Enterprise Incentive Scheme (NEIS) is a mainstream programme which helps eligible unemployed people to start and run their new, viable small business. NEIS provides training in small business management and business skills, and business plan development. NEIS does not provide start-up funds such as loans or grants. At the end of training (up to three months), if the business plan is approved, NEIS assistance starts. NEIS participants receive income support while developing their businesses along with business advice and mentoring support during the first year of operation. NEIS mentors have proven business acumen and proven experience in marketing, finance, accounting or other relevant business skills... However it has not really been taken up by Indigenous Australians.¹⁶

7.19 Indigenous Business Australia also provides some assistance. IBA Enterprises can support Indigenous people wanting to develop businesses, or access business development training and support, in a range of sectors including the arts. IBA does not, however, provide grant support to organisations or provide general education and training of art centre managers.

7.20 IBA is currently considering how it can take a strategic approach to supporting commercial development in this industry. In the absence of industry specific funding to support this industry, IBA must operate commercially. However Indigenous artists can, and do, access IBA Enterprises business support and development assistance. Indigenous Business Australia can also provide innovative commercial solutions to community enterprises where there is a desire to achieve commercial viability.¹⁷

CDEP

7.21 These DEWR programs can be accessed either by themselves, or in conjunction with other Government programs, such as the Community Development Employment Projects (CDEP) program. The Department of Employment and Workplace Relations (DEWR) administers the CDEP program which is the largest single provider of participation activities for Indigenous Australians. DEWR administers and implements strategies and guidelines for the effective delivery of the CDEP program. It is also responsible for funding and contract management, including monitoring and reporting on the performance of CDEP service providers. The CDEP program provides participation opportunities through activities which develop skills and improve employability of participants in order to assist them to move into employment outside the CDEP program.

7.22 CDEP activities can also lead to the development of business enterprises. The overall aim is to support Indigenous people to achieve economic independence.¹⁸ For example, the STEP programme outlined above has already been used in conjunction with the CDEP. A DEWR representative outlined some examples of how STEP had been utilised while at the same time drawing support from the CDEP.

In the first one, in Northern Australia, with the Association of Northern, Kimberley and Arnhem Aboriginal Artists, (ANKAAA), our STEP program has employed a business development officer to assist in the training of arts centre staff in business skills, developing business, strategic and marketing plans for arts centres, and developing better business practice within those centres. In a second example, STEP funding has been used to support a local Indigenous woman in Borroloola in the Northern Territory to gain qualifications in museum practice and arts centre

17 IBA, Correspondence to the committee, 4 June 2007.

18 DEWR website, <http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/CommunityDevelopmentEmploymentProjectsCDEPprogramme>, accessed 27 April 2007.

management. Once she has completed her training, she will move from CDEP to full-time employment.¹⁹

7.23 CDEP service providers receive funding to provide services and manage activities aimed at increasing employment outcomes for Indigenous people:

Organisations funded to deliver the CDEP programme (CDEP organisations) manage activities aimed at increasing employment outcomes, providing business development opportunities and meeting community needs to benefit Indigenous people and their communities. CDEP activities must lead to employment wherever possible and all activities must be approved by DEWR before the commencement of the activity. This emphasis on employment was reinforced in the 2006-07 CDEP programme guidelines.²⁰

7.24 This program plays a major role in Indigenous visual arts, as a source of employment for staff in art centres, and as a source of employment for artists, as many artists employed by arts centres are CDEP participants. DEWR indicated that:

It is estimated that around 130 arts activities are currently undertaken by 95 CDEP organisations. These activities can support up to 2100 participants. This accounts for around four per cent of all CDEP activity places.²¹

7.25 Submitters were positive about the role of CDEP in building skills and the capacity to be self reliant:

Many Art Centres are reliant on CDEP (community development employment program). By subsidizing the employment of local people, CDEP assists in basic training that provides a stepping stone into the organizing and running of a Community Art Centre. This in turn builds significant skills in assisting inter-cultural relations and furthering self-determination. As Art Centres act as a mediator between artists/community and art market, then it is vital that training of local people be not only maintained, but further encouraged.²²

7.26 DEWR supports the training of CDEP participants insofar as that training leads to off-CDEP employment. However, DEWR emphasised that CDEP is an employment program rather than a training program, and that its aim is to achieve 'unsubsidised employment' for participants.²³ It is not clear from the art centres'

19 Ms Mary-Anne Sakkara, Assistant Secretary, Community Development and Employment Future Directions Branch, Department of Employment and Workplace Relations, (DEWR) *Committee Hansard*, 11 April 2007, p. 16. See also p. 26 where Ms Sakkara refers to using the CDEP to give Indigenous people greater skills.

20 DEWR, *Correspondence*, 4 April 2007, Attachment.

21 DEWR, *Submission 66*, p. 8.

22 Cross Cultural Art Exchange, *Submission 16*, p. 1.

23 DEWR, answer to question on notice 11 April 2007, received 14 May 2007.

submissions that once a CDEP participant has completed training, the art centre then has the financial capacity to employ the person off CDEP. Therefore CDEP may not be the most appropriate program from which arts centres should be drawing assistance. DEWR is discussing with DCITA issues of CDEP cross-subsidisation in the arts sector (see below).

Changes to CDEP

7.27 Several changes to the operation of CDEP have recently been introduced. As noted above, people participating under the CDEP scheme can be employed by a CDEP organisation or placed by the CDEP organisation with an external or host employer. In July 2005 placements by CDEP service providers of CDEP participants with host employers were limited to 12 months duration. This applied to all CDEP participants including in remote areas. It is believed that most arts centres would fall under the category of host employers.²⁴

7.28 In July 2006 new CDEP participants in urban and regional centres were limited to 52 weeks (one year) participation to ensure CDEP becomes a stepping stone to real jobs.²⁵ This limit does not apply to remote areas where CDEP participants are not subject to a specific time limit.

7.29 Other changes to the CDEP will come into operation from 1 July 2007. After that date CDEP will no longer operate in urban and major regional centres. As a consequence of the cessation of CDEP, top-up payments will cease. CDEP will continue to operate in remote areas and in regional locations with weaker labour markets (as will top-up payments in these areas).

7.30 CDEP will cease in the following locations:

- **New South Wales** – Sydney, Central Coast, Newcastle, Hunter region, Armidale, Cowra, Griffith, Tamworth, Wagga Wagga, Albury and Queanbeyan
- **Northern Territory** – Darwin
- **Queensland** – Rockhampton, Yeppoon including Capricorn Coast and Gladstone including Biloela and Mt Morgan, City of Cairns and district from Palm Cove to Edmonton, Townsville region comprising the cities of Townsville and Thuringowa, City of Toowoomba and surrounding district including Oakey

24 DEWR does not collect information to indicate whether most CDEP participants working in the Indigenous art sector would be working for CDEP service providers or under host employer arrangements. However it is understood most service providers are relatively large organisations compared to art centres, and some art centres are not separately incorporated bodies. Both these factors suggest they are likely to be involved in CDEP under host employer arrangements.

25 Other changes included the provision that new CDEP participants under 20 years would be paid a youth rate consistent with the Independent rate of Youth Allowance. See Hon Kevin Andrews MP, 'CDEP Changes Announced', *Media Release*, 29 March 2006.

and Crows Nest, Dalby and district, Warwick and district, City of Mackay and district, Brisbane including North Stradbroke Island, Beaudesert, Ipswich, Sunshine Coast and Gold Coast

- **South Australia** – Adelaide and Riverland and immediate surrounds, South East South Australia and immediate surrounds, Port Lincoln and immediate surrounds, Port Augusta, Whyalla, Port Pirie and immediate surrounds, Murray Bridge and immediate surrounds
- **Tasmania** – mainland
- **Victoria** – Halls Gap, Horsham, Ballarat, Shepparton, Wangaratta, Echuca, Wodonga, Melbourne, Geelong, Bairnsdale, Orbost, Lakes Entrance, Lake Tyers, Warrnambool, Portland, Hamilton, Heywood, Mortlake, Camperdown, Terang and Robinvale
- **Western Australia** – Port Hedland, South Hedland, Bunbury, Busselton, Collie, Australind, Kalgoorlie, Esperance, Perth metropolitan area, Broome, Albany and Geraldton
- **Australian Capital Territory.**²⁶

7.31 Art centres expressed concern about the 12 months' employment limit, arguing that the 12-month period is shorter than needed to develop skills as an artist or art worker:

Waringarri Aboriginal Arts has a constitutional focus on providing employment and training opportunities for local indigenous people. Young people are encouraged to participate at the art centre as support workers and are provided with the opportunity to increase skills and knowledge in art centre operations and management. Currently 6 positions exist as administration, art materials supply, freight and packing, and gallery sales assistants. These positions are funded through the local CDEP scheme with “Top Up” payments to meet award levels. With the proposed changes to CDEP these positions will be jeopardized since the twelve month cut off of each CDEP placement does not allow sufficient time to adequately train staff. It would be reasonable to assume that training positions need at least two years period in order to achieve skills levels required for the performance of most art centre positions. Training in these positions enhances the opportunity for young indigenous people to achieve success in a range of future employment options that may be made available both within and outside the sector. A case by case arrangement should be put in place that acknowledges positive achievements and employment successes.²⁷

26 Community Development Employment Projects (CDEP) programme, web site, <http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/CommunityDevelopmentEmploymentProjectsCDEPprogramme.htm>, accessed 28 May 2007.

27 Waringarri Aboriginal Arts, *Submission 52*, pp. 2–3.

7.32 Waringarri Aboriginal Arts concluded:

Without CDEP or an appropriate funding alternative Waringarri Aboriginal Arts is unlikely to be able to continue on its current path of success and sustainability.²⁸

7.33 The Arts Law Centre of Australia expressed similar concerns:

The new system of Community Development and Employment Projects (CDEP) program is problematic for the financial viability of many artists and the CDEP providers with whom they are working. The CDEP system does not reflect the reality of job and business prospects for Indigenous people in regional and remote Australia, with CDEP participants expected to move into real jobs after 52 weeks on CDEP.²⁹

7.34 Concerns were also expressed about the changes to be introduced from July 2007. It was argued that these would threaten the viability of art centres in urban and major regional centres and threaten the livelihood of artists and art centre support staff in these areas. Professor Altman stated that:

Proposed changes to the CDEP scheme that would see its disappearance in metropolitan and urban centres could have major impacts on the sustainability of arts practice in such areas. Even in rural and remote regions, pressure on CDEP organisations to exit participants into mainstream work could have deleterious impacts on the visual arts sector, both in terms of artist outputs and in terms of employment of art centre support staff.³⁰

7.35 Similar concerns were expressed in relation to arts centres in remote areas (submissions were received before the government's recent announcement) but as noted above CDEP will continue to operate in remote areas and in certain regional locations. Some concerns were expressed concerning the impact that the cessation of CDEP in urban and major regional centres from July 2007 will have, although the overall impact of this measure is difficult to determine at this stage. The cessation of CDEP in urban and major regional areas will, however, be complemented by the provision of additional funding to expand the previously discussed Structured Training and Employment Projects (STEP) program and to broker employment services in areas such as those affected by the changes. STEP is flexible enough to allow brokers to deliver community work activities similar to those delivered under CDEP.³¹

28 Waringarri Aboriginal Arts, *Submission 52*, p. 3.

29 Arts Law Centre of Australia, *Submission 36*, p. 8.

30 Professor Jon Altman, *Submission 11*, p. 6.

31 DEWR, Questions and Answers for the Outcome of the Indigenous Potential Meets Economic Opportunity Consultation, p.4.

7.36 DEWR noted that the nature of employers in the arts and craft sector, particularly the high proportion of very small businesses or sole traders, has limited the scope of STEP projects in the sector. For example, STEP funding cannot be used to fund artists directly. Artists are generally self-employed rather than employees of a business. However DEWR stated that STEP has been used successfully to support projects in the arts sector. As noted above, ANKAAA is, through STEP funding, employing a business development officer to improve the skills base of the organisation. In another example, the Mabunji Arts Centre is developing the employment and business capacity of its operations through STEP funding of an Indigenous employee to gain qualifications in museum practice and arts centre management.³²

CDEP cross subsidisation

7.37 The CDEP program was described in the previous chapter. The use of CDEP labour to support other government agency activities can be referred to as CDEP cross-subsidisation. It is estimated that 20 per cent of all CDEP participants could be in this category. This proportion varies across the country, but may be higher in remote areas. DEWR stated that available information shows that there are 34 arts activities that are supported by other government programs with up to 328 CDEP participants involved.³³

7.38 DEWR indicated that the department and other Commonwealth agencies are seeking to eliminate this cross-subsidisation between programs. DEWR stated that the aim is create 'real' employment and career paths for Indigenous people participating in CDEP activities that elsewhere would be 'real' jobs.³⁴

7.39 The committee recognises the contribution that CDEP has made, and continues to make, to skills development in Indigenous arts generally, and in art centres in particular. It supports the focus of CDEP on skills development and on-the-job training, which was widely regarded as important in this industry.

7.40 The committee supports ongoing discussion between DEWR and DCITA regarding Commonwealth support for employment in art centres. Art centres are a crucial part of a tremendous success story for Indigenous skills and Indigenous employment. The committee is supportive of any policy reform or restructure of programs that does not jeopardise that success and improves the efficiency and transparency of government assistance in the sector.

32 DEWR, *Submission 66*, pp 3–4.

33 DEWR, *Submission 66*, p. 8.

34 DEWR, *Submission 66*, p. 8.

Recommendation 11

7.41 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.

Other programs

7.42 Apart from government programs, there exists a number of employment, education and training programs run by non-government and other organisations. Desart, for example, argued that ongoing training is a critical sustainability factor in the arts and craft industry and it is developing a Training Network to support Aboriginal art centres in central Australia by building training partnerships between art centres and registered training organisations, and, where appropriate, other participants in the Aboriginal art industry of the Central Desert. Desart is pursuing this Training Network for artists and art workers, executive members of art centres and art centre managers.³⁵ A book explaining the Training Network, completed early in 2006, was developed as a training research project to examine the needs, aspirations and delivery of training to Aboriginal people working in Art Centres in central Australia.³⁶

7.43 The Training Network is open to all participants in the Aboriginal Art Industry of the Central Desert who have ideas and aims to create an overview of:

- registered training organisations offering training that meets identified needs of art centres: how, what and where;
- Government funding which may assist art centres to get the right training, and assist training organisations to provide the right training;
- participants in the art industry with ideas and perhaps resources to contribute; and
- available resources and initiatives.³⁷

This overview is intended to allow Desart to facilitate combining the correct mix of people, ideas and funding so as to initiate programs.

7.44 The Training Network offers:

Art centres the opportunity to tell Desart what they need and what they don't need, what will work and what won't work, as well as share past experiences, good and bad. The Network helps art centres to say what they want from training to training providers and to work with training providers to get it;

35 Desart, Appendix 2 Training Book, pp 8–9.

36 Desart, *Submission 49*, p. 14.

37 Desart, Appendix 2 Training Book, p. 8.

Training providers the opportunity to be part of a community of practice and to register on our participants list. This way they will learn about possible opportunities and projects;

All participants in the Aboriginal art industry of the Central Desert the opportunity to contribute ideas and other opportunities for training. These may be artists, galleries, academics, suppliers, tourist centre staff and peak organisations as well as others; and

Government a forum to match national training policy and funding with the needs of Art Centres in Central Australia in practical and inclusive ways, some of which will be tried and true, some of which will be new.³⁸

Education and training of artists

The bigger picture

7.45 A number of submissions have indicated that many Indigenous artists, living as they do in remote communities, have experienced a lack of educational opportunities. This is a fundamental problem that transcends the Indigenous arts industry. Education standards for Indigenous people are low, and this affects their ability to procure and maintain employment, and generally make educated decisions about their lifestyle and future.

7.46 Raising basic literacy and numeracy skills remains a fundamental prerequisite to assisting Indigenous artists becoming more empowered in terms of their rights and responsibilities in the arts industry:

Few Indigenous artists are fully aware of the role and practices of the commercial art world and there is limited willingness to question those practices and to insist on ethical written contracts and agreements. Education at all levels is necessary in order to equip art centres, communities and individual artists with a sense of the marketplace and its operation.³⁹

7.47 Furthermore, this is not exclusive to remote communities. Even Indigenous communities in the urban environment are suffering from the same problems:

There is a strong perception that urban artists have more access to art industry services. This is not the case, many urban artists lack skill, education, financial means and exhibiting opportunities as do artists in remote centres. Queensland does not have the kind of infrastructure and support that has been afforded Aboriginal artists of the Northern Territory, Western Australia, and South Australian artists with the exception of Lockart River and Arakun and more recently Mornington Island Community Art Centres.⁴⁰

38 Desart, Appendix 2 Training Book, pp 8–9.

39 ArtSource, *Submission 15*, p. 5.

40 Ms Jennifer Herd, *Submission 47*, pp 2–3.

Initiatives for the Indigenous arts industry

7.48 Moving beyond the basic issue of the low levels of Indigenous literacy and numeracy, there are issues specific to Indigenous artists and the arts industry. There are a number of initiatives being provided which attempt to address different areas of disadvantage that Indigenous artists are experiencing.

Indigenous Creative Business Development

7.49 For the Indigenous visual arts industry to be sustainable, Creative Economy argued that the Indigenous people's capacity to participate in the sector on an equal basis needed to be continually supported through knowledge transfer and skills development.⁴¹ To assist this, in 2004 Creative Economy initiated a business development programme – the Indigenous Creative Business Development (ICBD) – to meet the demand for improved business management.

7.50 The ICBD aims to:

- address the need for business skills relevant to participants' own primary income activity;
- provide practical business assistance tailored to the specific needs of the applicants;
- provide business mentoring at the participants' location;
- share knowledge in a culturally appropriate way; and
- support individuals to develop the capacity to conduct successful commercial enterprises.⁴²

7.51 Creative Economy claimed that the program is highly effective not only in its delivery and results but also in its administration.

[It] increases management capabilities, business skills and participation of Aboriginal and Torres Strait Islander people in sustainable enterprises. ICBD is the only program of its kind in Australia focused on the creative sector and provides practical business to business mentoring and skills development. The ICBD program is a key strategy to improve practice, increase capacity and minimise unethical trade to contribute to the sustainability of the sector.... For the past three years Indigenous Business Australia (IBA) has supported Indigenous clients to access ICBD to receive tailored, practical and culturally sensitive business assistance to support their capacity building and economic self-sufficiency aspirations.⁴³

41 Creative Economy, *Submission 8*, p. 3.

42 Creative Economy, *Submission 8*, pp 6–7.

43 Creative Economy, *Submission 8*, pp 6–7.

Copy Rite

7.52 While Creative Economy aims to educate Indigenous artists about business skills, Viscopy aims to educate artists and staff about copyright issues. To that end, Viscopy conducts a copyright education program known as *Copy Rite*. The program operates by delivering workshops, and travels to Indigenous communities throughout remote, regional and metropolitan Australia, free of charge to the artists. Workshops employ visual techniques developed with the World Intellectual Property Organisation Traditional Knowledge protocol, are delivered by Indigenous staff, and make use of community based translators where necessary.⁴⁴

7.53 The *Copy Rite* Indigenous visual copyright education program is currently funded by a grant from the Department of Communications, Information Technology and the Arts (DCITA) and aims to:

- educate and provide advice to Indigenous artists and communities regarding copyright protection, and how to best to preserve and exploit the rights in their own works;
- assist with the resolution of issues as they arise;
- refer reports of infringements and market issues to Viscopy and/or other relevant bodies;
- educate artists with regard to the importance of Wills and Estates to protect copyright for their beneficiaries;
- promote the licensing services and royalty benefits of Viscopy membership; and
- advocate for the better protection of Indigenous artists from market and social abuses.⁴⁵

Artists in the Black

7.54 Lack of artist education is a hindrance when trying to litigate against 'carpet baggers',⁴⁶ and the evidence indicated that there is a lack of knowledge amongst artists on their legal rights. Arts Law Centre of Australia claimed to have an extensive program to educate artists and arts workers about legal rights and obligations of the arts sector.⁴⁷ They argued that:

Financial success and sustainability is more likely when Indigenous artists and communities are fully aware of their rights and are able to negotiate the terms of purchase and use of their work. Increased access to legal financial

44 Viscopy, *Submission 44A*, p. 3.

45 Viscopy, *Submission 44A*, p. 3.

46 Mr Alex Malik, *Submission 6*, p. 36.

47 Arts Law Centre of Australia, *Submission 36*, p. 2.

and management education and advice services is critical to informing artists.⁴⁸

7.55 Arts Law have set up a program – Artists in the Black (AITB) – which provides free legal advice services, legal education and advocacy services to and on behalf of Indigenous artists and arts organisations throughout Australia. It is staffed by an Indigenous lawyer and an Indigenous information officer and is the only national service of its kind.⁴⁹

Tertiary education

7.56 Of the numerous submissions received, few gave any details of tertiary courses available for the Indigenous visual arts sector. However, Griffith University began a course in 1995 – the Bachelor of Visual Arts in Contemporary Australian Indigenous Art – which is claimed to be unique to the Australian university system. The course centres around Indigenous Australian students' research into their own cultures and looks at the way those cultures continue to be viable in a rapidly changing society.⁵⁰ Jennifer Herd commended the course and argued:

Sustainability and improvement for the sector can be achieved through adequate training and education. So far our program is the only program at any Australian University that offers a program of study in the visual arts with both theory and practice for Aboriginal artists. The program is taught by Aboriginal lecturers who are practicing artists themselves. There is an opportunity for government to support what is already being done and proven to be working and assist us through further funding initiatives to improve the capacity of Australia's Indigenous artists and their earning potential. Current programs and centres offering training need ongoing support. Particularly courses that are supported by the community, such as CAIA that has been operating for 10 years.⁵¹

7.57 The Queensland Government recognises the need for education and training and supports the University of Griffith's course:

There is a very real need to address education and training, skill shortages in communities and succession planning for Indigenous visual arts and craft practitioners and administrators. Certificates in Aboriginal or Torres Strait Islander Cultural Arts at Cairns TAFE and the Bachelor of Visual Arts in Contemporary Indigenous Art course offered by the Queensland College of Art Griffith University were the first and remain the most substantial qualifications available in this field.⁵²

48 Arts Law Centre of Australia, *Submission 36*, p. 2.

49 Arts Law Centre of Australia, *Submission 36*, p. 12.

50 Ms Jennifer Herd, *Submission 47*, pp 3–4.

51 Ms Jennifer Herd, *Submission 47*, pp 3–4.

52 Queensland Department of the Premier and Cabinet, *Submission 58*, p. 24.

7.58 Like many other aspects of the Indigenous arts industry there have been, through a variety of submissions, calls for greater funding support for these and other education programs. For example, Artsource recommends that the Government provide ongoing assured program funds to ensure that the education and understanding that artists and the industry require can be provided.⁵³ The National Association for the Visual Arts Ltd (NAVA) recommends:

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.⁵⁴

New Zealand initiatives

7.59 The New Zealand Ministry for Culture and Heritage provided a submission to the inquiry which the committee received with interest.⁵⁵ The submission outlined a number of education initiatives designed to strengthen their Indigenous arts industry, including artist training and education in intellectual property rights.

7.60 One example is the Domestic Traditional Knowledge Work Program. Run by the Ministry of Economic Development, this program is a three staged intellectual property and traditional knowledge work plan. It responds to concerns raised by Maori and by indigenous people internationally, about the impact of intellectual property systems on traditional knowledge both in terms of cultural preservation and economic development opportunities.⁵⁶

7.61 Creative New Zealand has launched a programme aimed at the development and preservation of Maori arts. *Toi Ake* is a resource and funding program that has a long term focus on nurturing and strengthening arts within Maori communities. *Toi Ake* has been tailored by iwi (tribes) and arts practitioners into a model that focuses on development and retention of Maori arts, both traditional and contemporary. It assists with planning, training and management to support the long term strength of Maori arts.⁵⁷

7.62 The committee found the New Zealand submission informative, and believes that there may be some initiatives which may warrant consideration for the Indigenous visual art industry.

53 ArtSource, *Submission 15*, p. 4.

54 NAVA, *Submission 27*, p. 7.

55 Te Manatu Taonga, New Zealand Ministry for Culture and Heritage, *Submission 84*, pp 4–5.

56 Te Manatu Taonga, New Zealand Ministry for Culture and Heritage, *Submission 84*, p. 5.

57 Te Manatu Taonga, New Zealand Ministry for Culture and Heritage, *Submission 84*, p. 10.

Education of consumers

7.63 There are currently a number of initiatives designed to educate consumers about Indigenous art, methods by which to ensure that the arts' authenticity, and to undermine illegal and unethical activity.⁵⁸ Consumer education can be divided into domestic and international, however in both cases it aims to ensure that the consumer is aware of the arts' authenticity, and that the customer can be confident that payments provided are of fair value and that the money will be provided to the recognised, legitimate artist. There is a strong recognition that such education will assist in curtailing unethical activity,⁵⁹ and help establish and support Indigenous intellectual property rights.⁶⁰

Domestic programs

7.64 The Northern Territory Government strongly supports the education of consumers and has provided funding and support through joint programs. One such example is the co-project with ANKAAA; the *Purchasing Australian Aboriginal Art – A Consumer Guide* brochure.⁶¹

...the Northern Territory government is very keen to pursue ... the education of ... consumers, so that they have an awareness of what they are actually purchasing and what they are looking at when they go to galleries. So through ANKAAA, the Northern Territory government has funded the consumer brochures, which we now have in four languages, to assist tourists coming into the country to get some background and to understand copyright law, intellectual property, moral rights and all the different aspects of purchasing Indigenous art.⁶²

58 Western Australia Department of Industry and Resources, *Submission 35*, p. 10. "Implement a cohesive consumer education and awareness program, in partnership with key industry representatives. This campaign should target specific layers of the overall industry, including international tourists and the fine art market. Use a range of media, from publications and postcards to information for in-bound travellers." Recommendations and observations such as this are common to many Submissions.

59 Professor Jon Altman, *Submission 11*, p. 9 & p. 11.

60 Mr Alex Malik, *Submission 6*, p. 1. "In particular, greater public education should be undertaken regarding the importance of Indigenous Australian Intellectual Property (IP) rights and in the impact of IP rights infringement in this area. Indigenous Australians should also receive greater education regarding their legal rights in the advent of IP rights infringement impacting on them. Australian Aborigines need to be made aware that they are not powerless to prevent the theft of their creativity, and criminal and civil remedies exist to prevent this type of activity. Non Indigenous Australians need to be made aware that the theft of Indigenous Australian arts and craft is not a victimless crime."

61 Association of Northern, Kimberley and Arnhem Aboriginal Artists, (ANKAAA), *Submission 63*, pp 12–13.

62 Ms Stephanie Hawkins, Manager, Indigenous Arts Development Unit, Arts NT, Department of Natural Resources, Environment and the Arts, Northern Territory, *Committee Hansard*, 20 February 2007, p. 6.

7.65 ANKAAA has also produced a *Guide to Aboriginal Art* that helps direct buyers to Indigenous owned enterprises. The committee was also shown the *Indigenous Visual Arts and Craft Resource Directory*, a major project of DCITA, prepared with the assistance of other organisations. This directory is now in its fourth edition, created in 2006.⁶³ It is a valuable resource for all in the sector, whether artists, other industry participants or consumers. The committee notes the current process, led by the National Association for the Visual Arts, that will result in an Indigenous Art Commercial Code of Conduct (see chapter 10). One vehicle for encouraging the adoption of the Code would be to ensure that only Code-compliant organisations are included in future editions of the Resource Directory.

Recommendation 12

7.66 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.

7.67 Other initiatives include those of arts centres and galleries. Birrung Gallery has established an educational program of free public lectures on various topics that regularly inform the public of art market information. These have included forums on a variety of subjects including 'Indigenous Art as Investment'.⁶⁴

7.68 Purchasers of Indigenous art are generally positive about the industry, and supporting Indigenous artists. Papunya Tula Artists have noted that consumers respond positively to education.

Papunya Tula Artists (PTA) has recognised consumer education as an essential factor and, along with all interstate galleries related to PTA, has attempted to bring consumers up to date with current industry issues. Many consumers are not aware of such issues but respond very positively when things are explained in greater detail. Often those who previously purchased work without knowing its origins have immediately altered their philosophy and only deal with art centres, or with their referred dealers interstate. Consumers, on the whole, want to support Aboriginal artists and do the right thing by the industry, but, in general, they lack the background knowledge to make an informed decision.⁶⁵

7.69 The Cross Cultural Art Exchange concurs:

Education of all industry sectors is an important process to combat unscrupulous and unethical conduct. Most consumers, when made aware of industry issues, are more than interested and happy to proceed with their purchase knowing that it is ethically correct.⁶⁶

63 DCITA, *Indigenous Visual Arts and Craft Resource Directory*, Canberra, 2006,

64 Birrung Art Gallery, *Submission 3*, p. 3.

65 Papunya Tula Artists, *Submission 14*, p. 5.

66 Cross Cultural Art Exchange, *Submission 16*, p. 2.

7.70 Like education for Indigenous artists there have been, through a variety of submissions, calls for greater funding support for consumer education programs. Christine Godden, while recognising that some initiatives have occurred, argued they are not substantive enough and recommends that substantial funds should be available for a nation wide, consumer education campaign about purchasing authentic Aboriginal art.⁶⁷

7.71 Alex Malik, while positive about the initiative, himself discussed the lack of resourcing in the context of the ANKAAA/NT Government brochure.

This brochure contains information regarding the piracy and counterfeiting of Indigenous Aboriginal art and craft. However the existence of this type of brochure appears to be a rare incidence.

The absence of brochures and information sheets other than this brochure demonstrates that there is a need for greater Government education in this area.⁶⁸

International programs

7.72 The growing interest in Australian Indigenous visual art and the international price increase of visual art generally indicates that there is a larger and more lucrative market for Indigenous art.⁶⁹ Given this, there are opportunities that could perhaps be better exploited with a more educated international market.

7.73 A key aspect of the education of international purchasers of Indigenous art is to provide greater information to tourists. The National Association for the Visual Arts Ltd (NAVA) is seeking to promote an initiative in conjunction with the tourist industry.

We are starting negotiations with the tourism industry, in particular, because the way that purchasers of Indigenous arts approach the enterprise is often on the basis of no knowledge or a lack of awareness of what is at stake. We feel that if those who are buying Indigenous arts were better educated and their commitment was increased to understand the consequences of not observing the appropriate standards we might get some improvement.⁷⁰

7.74 There was a recognition in a number of submissions that education is required for the international market. ANKAAA argued that:

67 Ms Christine Godden, *Submission 41*, p. 7.

68 Mr Alex Malik, *Submission 6*, p. 39

69 In 1996, Aboriginal art auction sales were listed at \$1.36 million; in 2006 they had increased more than ten times to \$14.32 million. See Australian Arts Sales Digest, <http://www.aasd.com.au/AnnualAuctionTotals.cfm>, accessed 2 May 2007.

70 Ms Tamara Winikoff, Executive Director, National Association for the Visual Arts Ltd, *Committee Hansard*, 23 February 2007, p. 19.

In the newly burgeoning international market there needs to be a focussed education campaign to complement export opportunities in regards to the cultural significance of the works but also the diversity of culture, country and art forms across Australia. There also needs to be an educational push for the sector regarding the different market focuses of identified International opportunities. Cultural tourism within specific Art Centres is providing a unique experience for international visitors and providing interaction with a variety of community members.⁷¹

7.75 Ms Apolline Kohen, Arts Director, Maningrida Arts and Culture, also sees the potential for exploiting the international market:

Another area where the government can make a significant difference is to help us genuine representatives of Indigenous artists to promote Aboriginal art overseas. We need to enter new markets before we reach saturation at the domestic level. To help us access new markets, I urge the government to embark on a promotional and educational effort to make Aboriginal art better known overseas. Exposure to good quality works through educational shows will provide a springboard for the establishment of new markets for organisations like our art centre. Additionally, we would welcome support for international market research. There is considerable scope for art centres to exploit the export market.⁷²

7.76 There has been some cooperation between agencies in promoting Indigenous art for export through education. Desart, in conjunction with Austrade, ANKAAA and the Northern Territory Government, has been engaged in a number of export related projects, particularly over the past two years, including hosting inbound trade missions in partnerships; conducting a research project with identifying export pathways for Indigenous art; and hosting a research project with the University of Sydney International Entrepreneurship business course to consider pathways and opportunities for new products.⁷³

7.77 Austrade, the Federal Government's agency tasked with helping more Australians succeed in export and international business by providing advice, market intelligence and support to Australian companies,⁷⁴ see themselves as having an important role:

Education for all stakeholders is of primary importance in order to achieve the best export outcomes. Here, Austrade can play a pivotal role in disseminating information to consolidators on export opportunities, services, and international market trends. Indigenous arts consolidators can

71 ANKAAA, *Submission 63*, p. 15.

72 Ms Apolline Kohen, Arts Director, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 43.

73 Desart, *Submission 49*, p. 29.

74 Austrade mission statement, <http://www.austrade.gov.au/About-Austrade1351/default.aspx> accessed 30 April 2007.

in turn educate Austrade on the mechanisms of the Indigenous arts industry, the issues affecting the export of art, the preferences for particular clients, and the pathways to supporting ethical trade practice. Austrade and Indigenous arts consolidators can combine their expertise in helping to inform the foreign market about Indigenous art and its availability.⁷⁵

7.78 The Northern Territory Government believes that there is some scope for Austrade assisting art promotion.⁷⁶ However Austrade has also come in for some criticism with one submission describing the organisation as 'friendly, [but] needs to earn its income – it is usually unskilled in regard to assisting in the arts area'.⁷⁷

New Zealand initiatives

7.79 The initiatives in New Zealand, discussed above, in many cases extend to the education of the international market. For example, the Domestic Traditional Knowledge Work Programme involves providing education to the international market through the issuing of 'International Fact Sheets' on the issue of intellectual property and traditional knowledge.⁷⁸

7.80 Toi Maori Aotearoa is a charitable trust established in 1996 and it aims to foster the development of Maori arts.⁷⁹ Toi Maori Aotearoa annually produces a wide range of events and activities that include festivals, exhibitions, performances, publications and workshops that relate to a wide spectrum of Maori art forms.

7.81 One Toi Maori Aotearoa initiative was the 'Maori Art Meets America' – a joint venture between Toi Maori Aotearoa and Tourism New Zealand. Over fifty Maori artists and dignitaries travelled together to San Francisco to participate in the opening ceremonies and exhibition. Tourism New Zealand hosted an evening of hospitality and entertainment for over 300 business people and officials and Air New Zealand hosted a separate though similar event.⁸⁰

7.82 Again, the committee believes there may be some advantage in looking more closely at some of these initiatives to see if there are similar ways in which the international market can become better educated about and exposed to Australian Indigenous visual art.

75 Austrade, *Submission 29*, p. 9. See also, Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, pp 36–37.

76 Northern Territory Government, *Submission 57*, pp 27–33.

77 Lauraine Diggins Fine Art, *Submission 26*, p. 4.

78 *Te Manatū Taonga*, New Zealand Ministry for Culture and Heritage, *Submission 84*, p. 5.

79 *Te Manatū Taonga*, New Zealand Ministry for Culture and Heritage, *Submission 84*, p. 10.

80 *Te Manatū Taonga*, New Zealand Ministry for Culture and Heritage, *Submission 84*, p. 11.

Ensuring effective education to support the industry

7.83 Education has been identified through many submissions and witness testimony as a key potential driver for improvements in the Indigenous visual arts and crafts industry. These submissions and testimony have generally recognised the importance of current education and training programs and argued that relatively small increases in resources could have a great positive effect in terms of facilitating improvements in the industry.

7.84 The committee believes many of the education and training initiatives about which it heard are worthwhile. However, as the chapter on art centres showed, there appear to be some very pressing skills development needs in this industry, particularly in relation to such areas as business management and planning, accounting, marketing and governance. The committee acknowledges the work of Desart and ANKAAA, through initiatives such as the Desart Training Book.⁸¹ It seems nevertheless that much more needs to be done.

7.85 There were many suggestions made during the course of the inquiry, ranging from new university courses to on-site on-the-job training. The committee felt that while the case for education and training is strong, the preferred mechanisms to deliver it successfully are not clear at this stage.

Recommendation 13

7.86 The committee recommends that DCITA, in consultation with DEST, develop programs 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.**

7.87 The committee received some evidence from Creative Economy that suggested there may be issues in the way government programs may be assisting in meeting skills development and training goals.

DCITA states in its objectives for its NACIS program that it aims to 'strengthen governance and business management practices in the industry'. However, under the heading 'Activities the program does not support', it lists activities 'the purpose of which is not principally for production, promotion or marketing of visual arts and crafts'. The great breadth of business management, business development and skills development are not eligible activities under the program, so we were not eligible to apply under DCITA's program. DCITA states in its submission that it is the key

81 Desart, *Submission 49*, Attachment 2.

agency that advises and the key agency particularly for arts centres, but the activities to actually strengthen governance and business management do not fit within the guidelines...⁸²

7.88 The committee was disappointed in the failure of both the Office of Indigenous Policy Coordination and Indigenous Business Australia to provide submissions, despite repeated invitations to do so, and this has limited the committee's analysis of some issues. The committee also notes that the NACIS program is currently being evaluated by the Office of Evaluation and Audit (Indigenous Programs) (OEAIP) in the Department of Finance and Administration.⁸³ It recognises that there is already extremely strong competition for access to NACIS funds. The committee understands that increasing the range of activities that NACIS supports may need to be linked to increased resources to make this possible.

7.89 Without wishing to pre-empt any findings from the OEAIP evaluation, it does seem to the committee that, if anything, business management and governance are probably the areas in most pressing need of greater training activities in the industry. This may be an area where the alignment between the Indigenous Art Centres Strategy and Action Plan and NACIS funding needs to be re-examined.

Recommendation 14

7.90 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.

82 Ms Helene George, Creative Economy, *Committee Hansard*, 11 April 2007, p. 33.

83 DCITA, *Submission 50*, p. 8.

Chapter 8

Threats to the Indigenous art market

8.1 In March 2006, journalist Nicholas Rothwell wrote an article 'Scams in the desert', which highlighted questionable practices in the Indigenous art trade.¹ He drew attention to concerns about a range of issues in Indigenous art that have the potential to undermine the market for the art, as well as damaging the reputation of Indigenous artists and art movements. Anything that has the potential to damage this sector is of concern to the committee and to the industry's stakeholders. The committee's terms of reference require it to examine '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', and a great deal of the committee's evidence was on this subject. This chapter, and the two that follow, concentrate on these issues.

8.2 At the heart of concerns about the Indigenous art market are two related concerns: the integrity of art works that are sold in the Indigenous art market; and the conditions under which those works are produced and traded. However there are many facets to these issues and many strategies to combat them.

Provenance

8.3 The provenance of artworks is generally determined through two complementary but separate mechanisms – a certificate of provenance and some kind of proof of sale. It is important to note that the two mechanisms are independent: legitimate proof of a sale does not guarantee the provenance of the piece, nor does a certificate of provenance guarantee that the piece has been sold through legitimate means for a reasonable price.

8.4 The definition of provenance essentially revolves around the history and authenticity of a particular object. The provenance of a work is the:

Record of ownership for a work of art, ideally from the time it left the artist's studio to its present location, thus creating an unbroken ownership history.²

8.5 While provenance establishes the history and legitimacy of the work of art, this is not to be confused with the mechanism for the legitimate sale of the work, be it an Indigenous painting, souvenir, sculpture or other tradeable item.

1 Nicholas Rothwell, 'Scams in the desert', *The Weekend Australian*, 4 March 2006.

2 Antiques by Alternatives website, http://www.antiquesbyalternatives.com/Art_Terminology.htm, accessed on 13 February 2007.

Problems of Indigenous art provenance

8.6 When considering the provenance of Indigenous art, concerns are generally raised in regard to Indigenous art produced in remote communities in north and central Australia, and not so much in connection with art being produced by urban Indigenous artists.

8.7 Proving the provenance of Indigenous art and craft can be difficult. Traditional European scholarly methods of the 19th century, such as:

- where and when the work was painted;
- ownership lineage;
- documents of sale and proof of purchase;
- academic and other publication; and
- exhibitions

are not necessarily applicable to art work that has been created and sold in remote outback art centres or communities.³ Documentation prepared by art centres might not provide some of the information. Many works get sold by artists for cash or barter with little or no documentation at all. Yet many of these works will be the undisputedly genuine creative work of the Indigenous artist who sold them.

8.8 Carole Best described in her submission the various levels of authentication (or non-authentication) that can exist in Indigenous visual arts. Using work by Kumantji Possum Tjapaltjarri as an example, she listed nine categories that the art could fall into:

- securely provenanced works, both signed and unsigned;
- insecurely provenanced works both signed and unsigned;
- securely provenanced works signed as Kumantji Possum but not by his hand;
- insecurely provenanced works signed as Kumantji Possum but not by his hand;
- family works signed by Kumantji Possum Tjapaltjarri;
- unsigned family works which show evidence of Kumantji Possum Tjapaltjarri's hand;
- securely provenanced works that Kumantji Possum Tjapaltjarri did not recognise as his;
- several dozen 'known' forgeries, the identification of which involved significant resources at the time; and

3 Perkin, C., 'Plunder of a painter's reputation', *The Australian*, 8 December 2006, p. 16.

- an unknown number of unidentified forgeries currently circulating in the art market.⁴

8.9 Ms Best's categories highlight the role of family members that can be an important, and controversial, aspect of the making of Indigenous paintings. The role of families in the creation of art works – particularly paintings – can present problems with the verification of their authenticity. For example, paintings can be produced within the Indigenous community by individuals other than the recognised artist. That artist then signs the paintings and they are sold as original, authentic work:

"They [the women] make them, I sign them", famous Aboriginal artist Turkey Tolsen Tjupurrula was reported as saying... He reportedly revealed that scores of works sold under commission from an art gallery owner were in fact painted by his daughter, Nellie, and his daughters-in-law Leanne, Pamela and Elizabeth. They were then signed by him. Tjupurrula also reportedly said that with some paintings, "I do the markings first and give the canvasses to the women to complete".⁵

8.10 An investigation by the West Australian Police showed that this practice still continues today. Major Fraud Squad detective, Senior Constable Mark Duzevich, said in a 2006 media report that police had investigated claims that, amongst other issues, works sold under a high-profile artist's name were being largely painted by family members.⁶

8.11 However there is not agreement about the extent to which, or even the reasons why, this is a problem. Mr Ullin was just one stakeholder who questioned the level of concern in some quarters about the role of family members:

I cannot always guarantee, for instance, the culture of Aboriginal artists who design a painting— it is their painting—but who from time to time get their family to fill in dots, do a few lines and so on. There is no escaping that situation; it does occur. It does not mean that it is not authentic. In fact, if you go back through time, Rembrandt and other famous artists had schools. Altdorfer—there was a school of Altdorfer—and all kinds of famous artists had their students working with them. I do not see this as being very different with Aboriginal art, because the story is the person who designs the canvas. It is not necessarily how it is painted or the quality of the painting that matters; it is more, in Aboriginal areas, what the story is. That goes back, of course, to their history. There are some artists who

4 Ms Carol Best, *Submission 69*, p. 4.

5 Grafico Arts, Special Exhibition Reviews by Sue Smith, website, http://www.grafico-qld.com/exhibition/abart_comment.htm, first published in *The Courier Mail*, 24 April 1999, accessed on 15 February 2007.

6 Eloise Dortch, 'Aboriginal art experts warn of fraud as police fail to file charges', *The West Australian*, 16 March 2006, p.17; and 'Art of Exploitation', *The Australian*, 7 March 2006, p. 13. See also, Tania Johnson, 'When is a forgery not a forgery?', *Journal of Indigenous Policy*, Issue 6, pp 83–119.

would not have a bar of that, but overall you have to accept the fact that that is the case. It will happen. It does not mean that that artist is not authentic.⁷

It is also ironic that at the same time as some people are expressing concern about the role of family members in the provenance of works, there is, equally, widespread concern that the next generation in these Indigenous communities will not be mentored and develop the artistic skills that would lead them to one day being major artists in their own right.

8.12 Doubts about the role of family or community members may also fail to take account of the role of custodianship and tribal law in dictating who portrays country or stories through art. This is not just a question of who might be permitted to paint certain pictures. It can also involve expectations in the community that certain people will paint, or that they will co-operate with others in painting. Such collaboration may not be reflected in the signature of a single artist, but it may well be done openly and with a shared understanding between the community and the artist that it is appropriate. Designs and responsibilities for portraying certain images or laws may pass from one person to another, particularly on the death of an artist. The notion that this represents copying or imitation can represent a fundamental misunderstanding of the culture and motivations involved.

8.13 As Mr Ullin reminds us, collaboration of artists under a single signature has also been the norm in areas of western art. It still is. The sculptures of Patricia Piccinini are created with the assistance of highly skilled workers in the materials that are her media.⁸ Christo's 'wrapped' installations are created with the aid of large teams of volunteers. The roles of these artists, to whose names the works are credited, are not questioned merely because they did not undertake all – or even most – of the physical creation of the works.

8.14 The committee understands that family or community members can have a legitimate role to play in the painting of Indigenous art works. However it also recognises that the combination of cultural differences and concerns about fraud may be contributing to prospective buyers being unsure about the legitimacy of some artworks. In some circumstances this can create a danger that prospective sellers will be unable to sell their works as auction houses or dealers may refuse to act as intermediaries because they feel unable to guarantee the art's authenticity.⁹

'Carpetbagging'

8.15 Many participants in discussion about Indigenous art use 'carpetbagger' as a pejorative term in describing dealers involved in the exploitation of Indigenous artists.

7 Mr Claude Ullin, *Committee Hansard*, 11 April 2007, p. 41.

8 See, for example, Daniel Palmer, 'Interview with Patricia Piccinini and Peter Hennessey', *RealTime*, 2001, <http://www.patriciapiccinini.net/essay.php?id=6>, accessed May 2007.

9 Ms Carole Best, *Submission 69*, p. 4.

The term carpetbagger can be applied to particular individuals, backyard dealers, commercial gallery owners, private agents, or persons operating other legitimate businesses such as car yards or motels.¹⁰ Such a person is usually not Indigenous and seeks to obtain art from an artist at a price well below what that person knows or ought to know is a reasonable market price, with the intention of selling it on at a substantial profit.¹¹ It often involves taking advantage of the artist's age, poverty, medical condition or other disadvantage. Carpetbagging has become a problem through the combination of the great success of Indigenous art¹² and the weak economic bargaining position in which Indigenous people frequently find themselves.¹³

8.16 Unethical and unscrupulous behaviour by 'carpetbaggers' falls into different categories and is not necessarily illegal. One submission gave an example of a dealer who had paid \$150 for a painting that required a week to paint, and was probably worth \$1500. When confronted, the dealer argued that he had done nothing wrong, and justified his behaviour on the grounds that he was supporting Aboriginals who would otherwise have no income at all.¹⁴

8.17 Some of the different ways in which Indigenous artists are taken advantage of include but are not limited to:

- circumventing Arts Centres and 'cherry-picking' established artists;¹⁵
- Indigenous artists working under duress;¹⁶
- receipt of little or inappropriate payment (such as drugs or alcohol, or vehicles in poor condition),¹⁷ and
- selling misleading or fraudulent artworks. Carpetbaggers may sell fraudulent or sub-standard visual art produced through either:

10 Desart, *Submission 49*, p. 7.

11 Desart, *Submission 49*, p. 7.

12 Michael Reid, '2007 Art Market Trends', *Michael Reid* [newsletter], Feb-Mar 2007, p. 1.

13 Ashleigh Wilson, 'Probe into Indigenous artist "exploitation"', *The Australian*, 6 March 2006.

14 Ms Ali Cobby Eckermann, *Submission 56*, p. 1.

15 Ms Ali Cobby Eckermann, *Submission 56*, p.1. The submission gives an example of how established artists are given the pretence of 'special treatment' in return for receiving artwork at heavily discounted prices.

16 Papunya Tula Artists, *Submission 14*, p.3.

17 Papunya Tula Artists, *Submission 14*, p.3. The submission gives a broad overview of how elderly artists are manipulated into producing art for 'new' four-wheel drive cars. See also *Submission 55*, Mr A.P. Bond. Mr Bond's submission provides further detail.

- (i) a non-Indigenous artist;¹⁸ or
- (ii) an Indigenous artist other than the one who signed the painting.¹⁹

8.18 Even assuming that a legitimate Indigenous artist produced the art, it might be of poor quality or unrepresentative of traditional Aboriginal experience or lore. A number of examples have been highlighted in the submissions whereby artists produce 'rubbish paintings' for the dealer to make quick money.²⁰ The paintings are of poor quality because they are rushed, the environment in which they are painted is hostile, and the cultural reasons for creating art, such as country and community, are absent.²¹ In some cases, art is produced under the most appalling conditions. A deposition by a former employee of a motel describes how Indigenous artists are forced to live in squalid conditions in a motel in Alice Springs. The motel owners encourages the artists to reproduce existing paintings, for which they pay very little, and then demand rent from the artists, which they are unable to pay. This keeps them in a 'debt-trap', obligating them to produce more paintings.²²

8.19 These works find their way into galleries, or are sold on the internet through e-Bay and similar websites for inflated prices. These paintings are likely to be presented to unsuspecting and ill-educated consumers as high-quality work with questionable if not fraudulent representation of the paintings' authenticity.

8.20 There is no agreement over what constitutes bad practice and what is fair or even good practice. While kidnapping and forcing people to work under duress are illegal, circumventing art centres, for example, is entirely within the law:

- some parties believe only art works sourced from art centres can be both authenticated and be relied upon to have been fairly obtained;
- other parties, such as the Japinka Indigenous Fine Art Gallery, say this is paternalistic,²³
- Dr Korman believes that art centres do not suit some artists and they should be allowed to work outside the system if they feel they can receive greater remuneration;²⁴

18 Ms Jennifer Herd, Queensland Art College, *Submission 47*. Ms Herd refers to the Altman Report (2001) which gave an example of backpackers painting didgeridoos for the souvenir market.

19 Northern Territory Government, *Submission 57*. There are two aspects to this: one is the deliberate forgery and fake authorship of artwork by 'carpetbaggers', the other is forgery by other Aboriginal people of other Aboriginal artists.

20 Arnold Bloch Liebler and the Jirrawun Arts Corporation, *Submission 59*, p. 3.

21 Arts Law Centre of Australia, *Submission 36*, p. 6.

22 Desart, *Submission 49*, Appendix 4, pp 36-37.

23 Japingka Indigenous Fine Art Gallery, *Submission 21*, p. 2

24 Dr Ben Korman, *Submission 64*, pp 3-4.

- some artists work where there is no art centre in any case; and
- there are differing views of how much money is a reasonable rate of return to the artists, particularly given the high overheads and different ways of doing business in Indigenous art compared to 'mainstream' art.

8.21 The carpetbagger phenomenon is not, therefore, clear cut. The term is often used in a derogatory sense for many buyers who have worked in the bush over many years and built up a strong relationship with individual artists. One submission from Mr Eccles noted that it also often reflects the gulf between the art-trained gallerist and the rough bushy 'who may well have spent a whole lot longer actually among Aboriginal people'.²⁵ He also noted the irony of one dealer dismissing another because they 'trade in art as a commodity', as though this was not the business of all commercial art dealers.

8.22 Mr Eccles outlined the difficulty surrounding the judgements made about industry participants:

[Another dealer] himself identified as a carpet-bagger despite running a \$2m. investment fund for Aboriginal art from Abbotsford in Melbourne. He's classic – brought up in the bush, trading in emus and emu oil, picking up the art on the side to the point where he claims he had a turnover of \$200,000 a year, even before he set up full-time art trading....

"But I'm the one who's done the hard yards in the bush since I was 4 or 5 (he's 32 now), and I'm the one who's built relations with the artists. I was a pall-bearer at [Kumantji] Possum's funeral – I bought all his kids tuxedos for that – and his daughter...paints in my gallery".²⁶

8.23 The committee does not doubt that stories of unethical treatment of artists by some unscrupulous operators have their basis in fact. However it also recognises that there is not necessarily clear agreement on one 'right' way to do business between artists and galleries or dealers.

How do carpetbaggers get away with it?

Artists' circumstances

8.24 The carpetbagger is at an advantage over the Indigenous artist mainly because, given their general level of poverty, artists are willing to accept up-front cash payments for work rather than wait until existing works are sold through arts centres as they live in remote settlements with an extended family to support. Mr Anthony Oliver, Chief Executive Officer of Jirrawun Arts, gave a practical example by describing the circumstances of a particular artist.

25 Mr J Eccles, *Submission 43*, p. 2.

26 Mr J Eccles, *Submission 43*, p. 2.

He might need just that extra \$1,000 because of a family funeral.... Suddenly there is a funeral: 'I need two grand.' So what happens? The unscrupulous carpetbagger will say: 'You poor fella—that Jirrawun is not looking after you, is he? You come, I'll give you \$2,000,' getting a \$12,000 painting or a \$30,000 painting. Can you imagine how we feel, how the collectors that are supporting Freddie as an artist feel and how the galleries that have done the right thing and not taken much commission on a consignment system feel? Everyone just feels deflated and everyone feels that the whole system is being undermined. I understand why Freddie does that; I do.²⁷

8.25 Industry body Art.Trade agreed:

Overwhelmingly the problem of unethical behaviour by buyers or dealers, in our experience, happens with direct purchases from artists urgently needing money. Artists frequently find themselves in need of money and are under pressure themselves or from their family to make a quick sale. In these circumstances they will be tempted to accept payment well below a proper market price.²⁸

8.26 Other factors can include a lack of education, lack of knowledge about their rights and lack of understanding of western commercial arrangements. A particularly sad example of this was provided during the hearing at Alice Springs:

Talking about exploitation, there is one artist there. He is very old, and through the work of the art centre he has become quite successful at the moment. One day he came to the art centre and he asked me, 'Can you ask the man to give me the money?' I asked, 'Which man? Which money?' He said, 'I painted these canvases, three canvases, and he took them, and he hasn't given me the money.' I asked, 'Who is the man?' He did not know, because the man had not given him a name or anything. He just probably offered him money. I tried to explain to him that, if I do not have a name, if I do not have somebody to tell me who that person is, I cannot chase up the money. That is the kind of thing that has happened with old people.²⁹

8.27 Further evidence was presented at the Kununurra hearing indicating a lack of understanding of not the value of the art, but of taxation arrangements. Ms Cathy Cummins, the Manager of Waringarri Aboriginal Arts explained:

I would say that definitely there needs to be a much greater understanding of tax issues and Centrelink issues in some instances. We have trouble explaining to a couple of artists the very basic position: when you sell a

27 Mr Anthony Oliver, Chief Executive Officer of Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 44.

28 Art.Trade, *Submission 19B*, p. 1.

29 Ms Gloria Morales-Segovia, Assistant Manager, Warlukurlangu Artists, *Committee Hansard*, 21 February 2007, p. 39.

painting, you get this much and the arts centre gets this much.... I would say 80 per cent would need support.³⁰

Difficulty in securing prosecutions

8.28 Some, perhaps most, carpetbagging is not illegal, though there be an issue of unconscionable conduct under trade practices law (discussed in the next chapter). In those cases where a law may have been broken, few transgressions are reported either to police or to consumer affairs. This may be for a number of reasons which include:

- artists, being unaware of their rights, are likely to be unaware of the illegal behaviour;³¹
- artists may also feel a sense of shame, and reporting their transgression may bring social difficulties for them within the community;³²
- as artists are sometimes poorly educated, there may be no paperwork such as receipts. Hence, there may be no incontrovertible proof of fraud;³³
- artists and their communities have limited resources with which to engage the legal profession;³⁴
- organisations such as the police may themselves not be fully aware of their existing responsibilities, or the extent of the problems;³⁵ and
- purchasers of works of doubtful origin or price may be reluctant to undermine the value of their painting by reporting their concerns.

8.29 Carpetbagging has been recognised by almost all the submissions as one of the major problems confronting the Indigenous visual arts industry today. Even where existing laws have provided opportunities to prosecute, successful outcomes have been poor, mainly through the lack of evidence, and the artist's lack of education. Media reporting suggests that there has only been one known conviction, and that was in 2001.³⁶ Another investigation in Western Australia failed to result in charges

30 Ms Cathy Cummins, Manager of Waringarri Aboriginal Arts, *Committee Hansard*, 19 February 2007, pp 23-24.

31 Desart, *Submission 49*, p.19.

32 Desart, *Submission 49*, p.19.

33 The Australian Consumer and Competition Commission (ACCC) commented on 25 March 2006 that there was 'too much difficulty in trying to establish the necessary evidence to prove any breaches'. See John Oster, 'A code to stop the sweatshops' in *The Australian*, 2 June 2006, p. 17.

34 ACCC comment in John Oster, p. 17.

35 Mr Alex Malik, *Submission 6*, p. 35.

36 Katrina Strickland, 'Couple go on trial for Rover's art', in *The Australian Financial Review*, 24 November 2006, p. 3.

being laid.³⁷ The Australian Consumer and Competition Commission (ACCC) commented that:

the number of complaints that we receive in this area is very low... While there may be a sense in the community that there is a large volume of concern, that has not translated to allegations of breaches of the Trade Practices Act on a regular basis to the ACCC. [It] really assumes that we receive a number of these concerns, which is not actually the case.³⁸

8.30 A number of mechanisms have been suggested in submissions to combat the problem including:

- the introduction of new laws or regulatory frameworks;³⁹
- mechanisms through which to strengthen and guarantee the provenance of works;⁴⁰
- maintaining or strengthening the permit system for access to Indigenous communities;⁴¹
- better education for both artists and consumers;⁴² and
- more vigorous enforcement of existing law.⁴³

8.31 The committee recognises that, even if all these measure were implemented, the issue would not disappear. There will always be a few individuals seeking to profit unfairly from the work of others, whether in Indigenous art or any other industry. However, the committee was concerned at the extent of issues relating to the integrity of the Indigenous art market, and the following two chapters discuss some of the issues and initiatives designed to address these problems.

37 Eloise Dortch, 'Federal Minister sets sights on Aboriginal art fraud', *West Australian*, 5 April 2006.

38 Mr Nigel Ridgway, General Manager, Compliance Strategies Branch, Australian Competition and Consumer Commission, *Committee Hansard*, 23 February 2007, p. 65.

39 Arts Law Centre of Australia, *Submission 36*, p. 2. See also The Australia Council, *Submission 38*, p. 3, and Arts Law Centre of Queensland, *Submission 45*, p. 3.

40 Caruana Fine Art, *Submission 31*, p. 3.

41 Maningrida Arts & Culture, *Submission 51*, p. 4.

42 Northern Territory Government, *Submission 57*, pp 19, 23.

43 Viscopy Ltd. *Submission 44*, p. 6.

Chapter 9

Enhancing the market for Indigenous art – I

9.1 The Indigenous arts and craft industry is not immune from the problems that have befallen other industries, and concerns about fraud and unscrupulous conduct within the Indigenous arts and craft industry have been raised in many submissions to the inquiry.

9.2 This chapter briefly examines what legislation may currently exist to protect people within the industry from exploitation and other unethical practices, how these enforcement mechanisms appear to be working in reality, and what witnesses feel could be done to afford better ongoing protection of the industry and its artists.

Trade Practices Act 1974

9.3 It is the role of the Australian Competition and Consumer Commission (ACCC) to enforce the consumer protection and fair trading provisions of the *Trade Practices Act 1974* (TPA). Relevant aspects include prohibiting business conduct which is, or is likely to be, misleading or deceptive, and prohibiting unconscionable conduct by businesses in their dealings with consumers.¹

9.4 There are two main areas under the TPA that are relevant to the examination of unscrupulous trader activity occurring within the Indigenous visual arts and craft sector. Sections 51AA and 51AC of the TPA deal with the issue of unconscionable conduct. Section 52 of the TPA deals with misleading and deceptive conduct. An explanation of these sections and their relevance to the Indigenous arts and craft sector is provided below.

Unconscionable conduct

9.5 Unconscionable conduct is defined as being taken advantage of in a transaction in a way that offends the conscience. The TPA recognises that there may be circumstances or a situation in which the manner in which a contract was executed was unconscionable, such as a disparity in bargaining power.

9.6 While three sections in part IVA of the TPA address unconscionable conduct, only two relevant sections will be discussed for the purposes of this inquiry. In determining which provision will apply to a given set of circumstances it is first necessary to determine whether the conduct falls within ss. 51AA or 51AC.²

1 ACCC, *Submission 60*, p. 1.

2 ACCC, *Guide to Unconscionable Conduct*, Commonwealth of Australia, October 2004, p. 1.

9.7 Section 51AA of the TPA is a statutory prohibition on conduct which is unconscionable according to established legal principles. The courts have described unconscionable conduct as:

- serious misconduct or something clearly unfair or unreasonable;
- conduct which shows no regard for conscience;
- conduct which is irreconcilable with what is right or reasonable.

9.8 The court has indicated that it may be willing to grant relief under s. 51AA when:

- the stronger party unfairly exploits the weaker party's disadvantage;
- the stronger party relies on their legal rights to take advantage of the weaker party in a way that is harsh or oppressive;
- the stronger party allows the weaker party to rely on an incorrect assumption, or fails to disclose an important fact;
- one party benefits unfairly from the deal at the expense of the other party;
- the weaker party relies on a misrepresentation by the stronger party;
- the weaker party is unable to understand the deal, due to lack of experience or professional advice.

9.9 Section 51AC sets out several factors the court can consider in deciding whether or not conduct was unconscionable. They include, but are not limited to:

- the relative bargaining strength of the parties;
- whether the stronger party imposed conditions that were not necessary to protect their legitimate business interest;
- the use of undue influence, pressure or unfair tactics;
- whether the weaker party could obtain supply on better terms elsewhere;
- whether the stronger party made adequate disclosure to the weaker party;
- the willingness of the stronger party to negotiate;
- the extent to which each party acted in good faith;
- the requirements of any relevant industry code.

9.10 Section 51AC builds on the traditional concepts of unconscionable conduct under s. 51AA that apply to all commercial situations, not just the buyer-seller relationship. The ACCC explains that unconscionable conduct provisions do not apply to situations where one party may have simply made a poor deal.³

3 ACCC web site, *Unconscionable conduct 51AA & 51AC*, <http://www.accc.gov.au/content/index.phtml/itemId/303748/fromItemId/3669>, accessed 13 February 2007.

9.11 The ACCC recognises that Indigenous communities, particularly those in remote areas, often experience multiple forms of disadvantage or vulnerability and a general lack of awareness of competition and fair trading laws and as such may be more exposed to market exploitation relative to other consumer groups.⁴ This is particularly relevant to the Indigenous arts and craft sector, where this type of exploitation is purported to occur.

9.12 The ACCC gave no indication that any enforcement actions had been taken under ss. 51AA or 51AC for unconscionable conduct in the Indigenous art industry. However many submitters to the inquiry have indicated sincere concerns about regular unscrupulous activities between dealers and artists. As Professor Howard Morphy pointed out:

One of the things is the fact that some artists may not speak English and may have very little familiarity with the real value of money, and in particular not know the difference between \$150 and \$2,500 or something like that. Unscrupulous people will exploit that in their own interests. That is one of the things where arts centres and reputable dealers will protect the artist. In a sense they are protecting them against their lack of familiarity with usual Australian trade practices.⁵

9.13 Similarly, Ms Brenda Croft, Senior Curator of Aboriginal and Torres Strait Islander Art at the National Gallery, stated:

If you are a taste maker you want to promote someone's art and then you see all of these really unscrupulous people coming in and selecting those artists and then preying on them. It is not about free choice. People do not have those choices out in those communities where there is not access to understanding where your work goes or what happens with it. There are too few of us in the industry who are able to assist in that sense and we are fighting the undermining that is happening all the time.⁶

Misleading and deceptive conduct

9.14 Section 52 of the TPA deals with the issue of misleading or deceptive conduct and applies mainly to the relationship between businesses and intended consumers of their goods and services.

9.15 Under the TPA businesses must not do things that are misleading or deceptive, or would be likely to mislead or deceive customers (or anyone else including other businesses) with whom they have any form of commercial contact. This includes discussions and contracts, advertising in any form as well as labelling and packaging of products.

4 ACCC, *Submission 60*, p. 2–3.

5 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 75.

6 Ms Brenda Croft, National Gallery of Australia, *Committee Hansard*, 9 February 2007, p. 54.

9.16 Misleading someone includes:

- lying to them;
- leading them to a wrong conclusion;
- creating a false impression;
- leaving out (or hiding) important information in certain circumstances; and
- making false or inaccurate claims about products or services.

9.17 It is not necessary to prove that the conduct actually misled or deceived anyone, nor does it matter whether the misrepresentation is intentional, deliberate or accidental. What matters is the overall impression that is left in the customer's mind.⁷

9.18 The ACCC can take action in court against corporations and related individuals involved in misleading conduct, and may apply to the court for an injunction and other orders.

9.19 In enforcing consumer protection laws, the ACCC focuses on industry-wide conduct and conduct that affects many consumers, to achieve outcomes that make the most effective use of its resources. The ACCC cannot take action in all circumstances of misleading conduct.

9.20 Aside from enforcement by the ACCC, any person or business that has suffered a loss as a result of a business's misleading or deceptive conduct or misrepresentation may have a private right of action under legislation. Courts can order damages, injunctions and other orders against businesses found to have engaged in misleading or deceptive conduct.

9.21 Additionally, there are Offices of Fair Trading in each state and territory that can help with local issues of misleading conduct – if the business involved is a local trader, or the matter is within a certain locality. In some circumstances the Offices of Fair Trading can help consumers to resolve issues with businesses, or provide information about lodging claims in the Small Claims Tribunal.⁸ The committee wrote to state and territory departments of consumer affairs inviting submissions, however none were received.

9.22 In the ACCC's submission to the inquiry, only one example was given of court action against a business for misleading conduct when dealing in Aboriginal art products. Australian Icon Products was one of Australia's largest manufacturers of Aboriginal style souvenirs. The ACCC took action against Australian Icon under

7 ACCC web site, *Misleading Conduct*, <http://www.accc.gov.au/content/index.phtml/itemId/352599/fromItemId/3871>, accessed 14 February 2007.

8 ACCC web site, *What to do if You Think You Have Been Misled*, <http://www.accc.gov.au/content/index.phtml/itemId/740212/fromItemId/3871>, accessed 15 February 2007.

s.52 of the TPA for misleading and deceptive conduct over the company's false claims about the authenticity of the souvenirs which purported to be authentic and certified Aboriginal art, when in fact, the souvenirs were painted by a pool of Indigenous and non-Indigenous artists and no certification process was in place.

9.23 The ACCC's submission also referred to a number of other investigations into complaints of traders of Indigenous artworks potentially breaching the TPA. These complaints apparently all achieved compliance/resolution without court action being taken.⁹

9.24 During the inquiry the question was raised as to the extent of exploitation of Indigenous people by unscrupulous dealers, and what the level of business and marketing knowledge was in some communities. In response to this issue, Dr John Moriarty of the National Indigenous Council told the committee:

From the traditional communities the knowledge of marketing and even the level of education of marketing systems, or even the practices that go on from where an object is sold and the process that object goes through, the knowledge would be pretty well down to zero. That is a group that can be very easily exploited, and I put my community in that category.¹⁰

9.25 The ACCC advised the committee that they were well aware of such concerns about potential breaches of the TPA, and that they received on average between 30 and 40 per annum 'Indigenous-specific calls' on the ACCC's Indigenous hotline. While these were not all related to TPA issues, the ACCC was examining ways to bring awareness of TPA issues to Indigenous communities.¹¹

9.26 One initiative the ACCC had implemented was the development of a trade practices training manual designed to assist Indigenous communities to become aware of various forms of wrong market behaviour and associated issues, and this was part of the ACCC's outreach program:

which is a process of individual officers travelling to communities and basically—rather than us trying to move and educate a number of individual consumers in the communities—recognising the issues of trust and confidence that members of the community have within their local councils, working with those councils so that those people who are in regular contact and engage with members of the community are alert to the issues and are able to relay those messages and to get any concerns back to us. So it is really actively engaging with that broader network of Indigenous consumer councils around the country, but we have commenced the process in Western Australia to identify any issues we need to think about before we go more broadly.¹²

9 ACCC, *Submission 60*, p. 7.

10 Dr John Moriarty, National Indigenous Council, *Committee Hansard*, 9 February 2007, p. 43.

11 Mr Nigel Ridgway, ACCC, *Committee Hansard*, 23 February 2007, pp 61–62.

12 Mr Nigel Ridgway, ACCC, *Committee Hansard*, 23 February 2007, pp 61–62.

9.27 As a result of evidence and submissions provided to the committee during the course of this inquiry, the ACCC conducted a review and in the process identified some possible indicators of unconscionable conduct. The ACCC advised the committee that although none of the evidence related to ongoing conduct:

ACCC staff have identified lines of inquiry for identifying any current or ongoing conduct that may breach the TPA. The ACCC has already begun to pursue those lines of inquiry, contacting submission authors and meeting with Art Centre representatives in Central Australia and the Top End. The ACCC has a further visit to Alice Springs scheduled during which it anticipates meeting with artists who may be able to provide first hand evidence of unconscionable conduct. The ACCC also continues to monitor the development of the National Indigenous Art Commercial Code of Conduct and associated Ethical Trading Strategies while maintaining its regular educative and outreach role as relevant to Indigenous communities generally and the Indigenous Visual Arts and Craft Sector.¹³

9.28 The ACCC, while having regard to the submissions and transcripts and subsequent discussions with industry participants, noted that enforcement activity under the TPA will not completely resolve ongoing concerns about unscrupulous and unethical conduct in the Indigenous visual arts and craft sector. The ACCC recommends other strategies be supported and implemented with a view to long-term solutions, including empowerment and reduction in vulnerability.¹⁴ Those strategies might include education, resources and infrastructure in Indigenous communities as well as additional support for artists visiting major centres.¹⁵

9.29 In regards to the difficulties of enforcing the TPA, the ACCC noted a comment from submission 11 to the inquiry by Professor Altman, Director of the Centre for Aboriginal Economic Policy Research, which stated that 'unfortunately, Indigenous artists may be reluctant to participate in prosecutions under the TPA if they have been complicit in unconscionable conduct, sometimes for very basic reasons like lacking access to banking facilities and needing to trade informally to gain access to cash'.¹⁶ A full copy of the ACCC's correspondence to the committee outlining their review of submissions and verbal evidence for indicators of potential breaches of the Trade Practices Act is attached at Appendix 4.

Imports of non-authentic Indigenous art and products

9.30 One issue of concern within the industry is the problem of imported non-authentic Indigenous arts, craft and souvenirs from other countries, which are then sold in this country as Australian Aboriginal art. While some of these products may not actually claim to be made in Australia and may be marked 'made in China' for

13 ACCC, Correspondence to the committee, 8 June 2007, p. 1.

14 ACCC, Correspondence to the committee, 8 June 2007, p. 1.

15 ACCC, Correspondence to the committee, 8 June 2007, p. 8.

16 ACCC, Correspondence to the committee, 8 June 2007, p. 6.

example, this type of product still serves to undermine the work of genuine Australian Indigenous artists.

9.31 IdenteArt Authentication Systems, a company working in the field of product protection and authentication technologies, submitted to the inquiry their concerns about:

The influx/export of Non-Indigenous/non-authentic cheap "Aboriginal-Styled" Art and Craft into Australia having a detrimental affect on local Indigenous art and craftsmen pricing, competitiveness and businesses infrastructure investment and development... The export into Australia of "Aboriginal styled" art and craft with made in China, Taiwan labels etc that is later is sold in major Australian capital cities now bearing written certificates of authentication. With advances in reproductive technologies and techniques it has increasingly difficult for consumers and indeed authorities to determine if fine art and craft pieces originated in Balgo or Bombay.¹⁷

9.32 The committee also heard a first hand example of how some of these fake imports come to exist in the first place:

Four weeks after the first paintings had been put onto the market, an Indian dealer turned up in a hire car at Yuendumu and started to try to buy up every piece of art that was currently being produced. After checking with Daphne Williams at Papunya Tula, we were informed that this man was going around buying authentic original pieces of Indigenous art, taking them back to India, mass producing them and selling them to tourists on the Gold Coast. That was four weeks after we started our program.¹⁸

9.33 This example highlights some of the difficulties in policing or regulating this type of activity, as there are two distinct issues here. One issue is whether and how the sale of art to purchasers who have unethical intentions might be regulated in the first place, preventing their use for the purpose of mass reproduction; the second is how can such mass-produced products be prevented from being imported into Australia.

9.34 One way of dealing with this is to stop such products entering the country via Customs. However, this is easier said than done, and the import of Indigenous art and craft products is not illegal unless the products purport to be genuine Indigenous art made by Indigenous Australians, or unless they are works purporting to be that of Indigenous artists who might have registered a copyright or have intellectual property rights to their name. A current list of prohibited and restricted imports on the Australian Customs Service web site does not include any reference to the importation of inauthentic Indigenous art products.¹⁹

17 IdenteArt Pty Ltd, *Submission 25*, p. 3.

18 Dr Peter Toyne, Identeart Pty Limited, *Committee Hansard*, 11 April 2007, p. 5.

19 Australians Customs Service, *Prohibited and Restricted Imports*, <http://www.customs.gov.au/site/page.cfm?u=4369>, accessed 15 February 2007.

9.35 The *Copyright Act 1968* may be used to enforce the control of the importation into Australia of 'inauthentic' artworks and souvenirs that purport to be genuine Indigenous arts and craft.²⁰ In relation to imported artworks, the copyright claim would be in the artistic works created by the Indigenous artist. To protect copyright works from importation of unauthorised works, the Australian Customs Service (ACS) stated that the copyright owner must have a Notice of Objection in place with Customs. This is a legal document that allows Customs to seize imported goods that infringe copyright owners' rights. The ACS suggested, however, that it would be 'quite difficult to protect these imports given the range of artists and types of work that may be imported'.²¹

9.36 Another possible avenue of redress is under the *Commerce (Trade Descriptions) Act 1905* (CTDA). Under this Act it is an offence to import goods bearing a false trade description. Customs can seize goods that bear a false trade description under warrant. However, it is a defence if the defendant proves that he or she did not intentionally import the goods in contravention of the Act. Customs noted that:

The combined requirements for Customs to obtain a warrant to seize goods bearing a false trade description and the defence provisions, mean that seizure of goods under the CTDA is resource intensive for Customs. It also places the costs involved onto the Commonwealth.²²

9.37 The Customs procedures may be of limited use for at least three reasons. First, Indigenous artists are probably particularly unlikely to be registering intellectual property rights, and to be difficult for Customs to contact. Second, Indigenous people generally are less likely to access the court system to exercise those rights, often through a lack of understanding about their legal rights and the court system generally. Third and most importantly, many of the problems with imports are about the undermining of Indigenous creators through general imitation of Indigenous artistic styles rather than specific infringements against an artist's rights.

9.38 The TPA as a legal mechanism also offers some protection from fake imports. During the hearings the ACCC were asked at what point the sale of non-authentic imported products, such as didgeridoos from Bali, breached the TPA. The ACCC advised the committee that:

The section of the act we would be looking under is section 52, the misleading and deceptive conduct provisions. I suggest that if the description of the product that was imported from Indonesia implied that it was Indigenous or originated in Australia then it would be likely to be misleading or deceptive. If it was clearly labelled 'Made in Indonesia', then

20 For a discussion of the issue, see Mr Parnes, Director, The Rainbow Serpent Pty Ltd, *Committee Hansard*, 23 February 2007, pp 23–26.

21 ACS, *Submission 81*, p.1.

22 ACS, *Submission 81*, p. 2.

I think there would be less chance that it would be misleading and deceptive.²³

Copyright laws

9.39 There are two pieces of legislation which may help to protect Indigenous intellectual property rights and these are the Copyright Act and the *Designs Act 2003*. The Designs Act allows individuals to register a design under certain criteria that then affords protection from obvious or fraudulent imitations. The Copyright Act grants a set of particular rights to the creator of art based on three criteria; that the work is original, it can be reduced to a material form, and that the work has an identifiable author. A range of possible infringements are possible, from overt illegal unlicensed reproductions to the shady area of 'Aboriginal inspired' designs.²⁴ For a further discussion see chapter 11.

9.40 Copyright law in relation to Indigenous art has been somewhat effective, and prosecutions have been made which involved a breach of the TPA. In one case, action was brought against a company called Beechrow Pty Ltd, who imported carpets from Vietnam and sold them for up to \$4000 each. These carpets reproduced the work of prominent Aboriginal artists including George Milpurruru and a number of others, but permission to reproduce the artists' work was never sought from the artists or their representatives.

9.41 The courts found that the import of these carpets breached the Copyright Act and also infringed the TPA for false and misleading conduct. The court awarded damages plus ownership of the carpets to compensate for the cultural and personal hurt to the artists.²⁵

Fraud and illegal activity

9.42 The media reported late last year that attempts by the Australian Taxation Office and state police fraud squads to crack down on the financial irregularities and forgeries common in the Indigenous art trade were continuing, but with few visible results.²⁶

9.43 The policing of fraudulent art works in any area, not just within the Indigenous art sector, is generally not a routine or straightforward task. In general, police will only ever investigate matters when defrauded individuals approach the police with their complaint, and this is the same for art fraud matters. Law

23 Mr Michael Kiley, ACCC, *Committee Hansard*, 23 February 2007, p. 57.

24 J.C. Altman et al, 'Some competition and consumer issues in the Indigenous visual arts industry', *Discussion Paper No. 235*, Centre for Aboriginal and Economic Research, A.N.U., 2002, p. 13.

25 Terri Janke, 'Copyright – The Carpet Case', *Aboriginal Law Bulletin*, 13:3(72) 1995, p. 36.

26 Nicholas Rothwell, 'The desert's tainted brush', *The Australian*, 11/9/2006, p. 16.

enforcement agencies will not always be in a position to investigate matters where an individual suspects that a person is distributing fraudulent art works. The complainant in this regard will more than likely be referred to the relevant Department of Fair Trading.²⁷ Therefore, complaints about fraudulent art within the sector are more likely to be pursued through civil law channels rather than criminal ones.

9.44 Because Australia has nine criminal jurisdictions – with the six states, two territories and the Commonwealth, many investigations are restricted to their respective jurisdictions. In instances where more than one jurisdiction is involved, problems can occur over authority. Cross border trading is the norm in the Indigenous art sector and is thus problematic. Also, traditional investigative methods which involve interviewing witnesses, identifying suspects and obtaining statements, are of limited effectiveness in the investigation of art fraud. This is because the investigative trail tends to lack documentary evidence, which conventional fraud inquiries usually rely upon.

9.45 Just because a victim is prepared to report art fraud to the police, it does not mean they are prepared to sign a statement or an affidavit. Individuals can be reluctant to state in an affidavit and then give evidence that they were duped by a counterfeiter. Because art dealers and collectors operate almost solely by their reputation, and knowledge of their chosen fields of art, many are simply not prepared to lower their guard and admit they have been defrauded by counterfeiters. They believe that their business may suffer because of this perceived lapse in their credibility.²⁸

9.46 In addition to the above issues, there can be specific difficulties relating to claims of fraud or forgery in the case of Indigenous art works. Most Indigenous art works are not signed by artists, and it has been suggested that some Indigenous designs are easily copied. Indigenous art may also be the result of collaborations between different family members, meaning several people contribute to a single work, making the establishment of authenticity and provenance more difficult. These issues are addressed in chapter 8.

Issues and solutions

9.47 The Arts Law Centre of Australia argued that the sustainability and development of the Indigenous arts and craft sector is only possible with the reduction of current exploitative practices, and states:

Greater use should be made of laws against misleading and deceptive conduct. An increase in the involvement of the ACCC and other law

27 Paul Baker, *Policing Fakes*, Paper presented at the Art Crime Protecting Art, Protecting Artists and Protecting Consumers Conference convened by the Australian Institute of Criminology and held in Sydney, 2-3 December 1999, p. 6.

28 Paul Baker, *Policing Fakes*, Paper presented at the Art Crime Protecting Art, Protecting Artists and Protecting Consumers Conference convened by the Australian Institute of Criminology and held in Sydney, 2-3 December 1999, pp 7–8.

enforcement agencies in policing this conduct would encourage ethical conduct in the Indigenous art sector.²⁹

9.48 Additionally, Arts Law claimed that the lack of recognisable authenticity protection mechanisms may also affect the financial viability of the sector. Buyers of Indigenous art need some guarantee that the work they purchase is authentic, and the lack of certainty about the authenticity of Indigenous art work can have an impact on the value of such work in the market.³⁰

9.49 Viscopy, a non-profit company representing the rights of artists, claimed that exploitation of Indigenous artists by unscrupulous people is a major concern. In their submission, Viscopy related fourteen different types of experience the organisation had had with unethical or exploitative activity, and stated that:

These are not isolated incidences... We have reported a number of these incidents to Government authorities. Often little or no action is taken due to: a) a lack of resources to take the matter to court; b) a lack of priority for the issue; c) a lack of Indigenous staff with understanding of the issue; d) a lack of interest or expertise regarding market abuse issues from the arts sector. There has been limited direct regulation of the sector, (in fact NSW state regulation of the art market was reduced) during the last ten years, a time of phenomenal growth for the Indigenous art market. This has resulted in an expansion of the problematic aspects of the market as well as the income, such as examples of exploitation.³¹

9.50 The committee was concerned about some of the practices brought to its attention, while recognising that there was often limited evidence available to support allegations about poor conduct in the industry. The committee welcomed the evidence and assistance of the ACCC, and hopes that the information that has been made available during this inquiry will assist the ACCC in targeting poor practices in the industry.

Recommendation 15

9.51 The committee recommends that, as a matter of priority, the ACCC 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.

9.52 The committee believes that further work of the ACCC in this area, including any prosecutions undertaken, will also assist in identifying if any reforms of relevant trade practices law may be necessary to ensure that fair practices in the industry are fully supported.

29 Arts Law Centre of Australia, *Submission 36*, p. 3.

30 Arts Law Centre of Australia, *Submission 36*, pp 6–7.

31 Viscopy, *Submission 44A*, pp 11–12.

9.53 The preceding evidence highlights the need for better ongoing protection of the industry and its artists. To achieve such improvements generally may require a collaborative approach between industry, relevant organisations and governments. Some of the proposals for achieving better protection for the industry, such as codes of conduct, labels of authenticity, and other types of regulation and legislation are discussed in chapter ten.

Chapter 10

Enhancing the market for Indigenous art – II

Introduction

10.1 This chapter discusses a range of measures that have been proposed to help ensure the integrity of the Indigenous art market. It complements the previous chapter, which was concerned with the policing of the market.

10.2 It has been recognised by organisations involved in the Indigenous arts and craft industry, such as the National Indigenous Council, the National Association for the Visual Arts, and the Australian Indigenous Art Trade Association, that more needs to be done to deal with issues of establishing the provenance and authenticity of Indigenous art products and to deal with issues of unethical conduct. To this end, various proposals have been put forward, such as for:

- certificates of provenance and/or labels of authenticity;
- changes to the administration of the tax system;
- art dealer accreditation; and
- a code of conduct for the industry.

10.3 All these initiatives are targeted at minimising the damage that unscrupulous activities are having on the sector.

10.4 The consideration of two distinct groups is required when looking for solutions to some of the problems that appear to be affecting the Indigenous arts and craft industry in Australia. These two groups are (1) the consumers, i.e. those on the receiving end of Indigenous arts and crafts products, and (2) those involved in the industry itself, i.e. those creating the products or involved in their sale and distribution.

10.5 When it comes to the consumer end of the market, not only are there concerns about the authenticity of such things as Aboriginal souvenirs, t-shirts, boomerangs, etc., which may have actually been imported from other countries, but there are also concerns at the fine art end of the market where investors and other buyers need definite assurance that the expensive art work they are buying is indeed genuine. There have been some cases where the work of well-known Indigenous artists has been forged and this type of activity is suggested to have impacted at times on industry confidence. One such forgery case was the recent alleged attempt by a Melbourne couple to pass off four forged Rover Thomas paintings to buyers through

leading auction houses at a total cost of more than \$330 000.¹ So issues of provenance and of authenticity are of particular importance to the market.

10.6 When it comes to looking at those people involved in the industry itself, there are a number of issues to consider, including concerns about 'carpetbagging', the exploitation of Indigenous artists, and of other forms of unethical and unscrupulous conduct, outlined in chapter 8. There are also concerns that unscrupulous traders retailing products of questionable authenticity may be undermining businesses which deal only in goods created by Indigenous artists.²

10.7 To understand what may be required to deal with such problems, this chapter will examine the various schemes that have been proposed or implemented in the past to deal with concerns about authenticity and unscrupulous conduct. It will also look at what solutions are currently under consideration by various key players in the industry and how they may assist in addressing these problems. This includes looking at both the failed National Indigenous Arts Advocacy Association (NIAAA) label of authenticity trademark scheme, as well as the proposed code of conduct currently being drafted for the industry by the National Association for the Visual Arts (NAVA) in conjunction with Desart, the Association of Northern Kimberly and Arnhem Aboriginal Artists (ANKAAA), and supported by the Australia Council for the Arts.

Certificates of provenance

10.8 As discussed in chapter eight, provenance concerns the history and authenticity of an object or artwork. There is a strong emphasis in the Indigenous arts and craft sector on the use of provenance certificates, driven at least in part about concerns about the origins of some paintings in the sector. Legitimate certificates of provenance are currently issued by art centres and can include the following:

- a picture of the artist and the work;
- a description of the size and appearance of the work;
- a description of the story that the art work represents;
- the name, location and contact details of the arts centre or association that is identifying the work; and
- an authorising signature from a person representing the art centre or association.³

1 Perkin, Corrie, 'Plunder of a painter's reputation', *The Australian*, 8 December 2006, p. 16.

2 The Rainbow Serpent, *Submission 17*, p. 2.

3 See Appendix 7. This is an example of a Certificate of Provenance from the Warlukurlangu Artists Aboriginal Association.

Similar certificates are generally issued by commercial dealers.⁴ There is frequently little difference between the levels of documentation provided by art centres and those provided by other retailers in the market.

10.9 Suggestions that artwork be sold with accompanying photographs of the artist are problematic. Such a mechanism, while it may provide some degree of protection, will not necessarily guarantee the authenticity of the work.⁵ At the same time, one collector was dismissive of one art centre's certificates precisely because they did not include 'the obligatory working photographs'.⁶ The Arts Law Centre of Australia noted examples of artworks being fraudulently identified with particular artists through disingenuous 'authenticity' certificates.⁷

10.10 On a similar level, Arnold Bloch Liebler and the Jirrawun Arts Corporation have in their submission argued for the introduction through discrete legislation of 'certificates of authenticity' to accompany every initial sale of Indigenous artwork and/or artists representative organisation to the purchaser.⁸ Indeed:

Each certificate would include the name of the purchaser, artists and/or artist's representative organisation and their signatures. This mechanism would not involve any quantitative assessment of the 'fair value' of the work [and] a complementary register of certificates would exist that, excluding privacy details, would prescribe similar information.⁹

10.11 However, a less ambitious scheme has been tried previously in Australia. The 'label of authenticity' scheme operated from 1999 to 2003, and there were a number of reasons for its demise. The reasons for this are discussed in more detail below. A centralised scheme for provenance certificates would be extremely difficult to organise, and would place Indigenous art on a very different footing to non-Indigenous art, as well as increasing costs for an industry already facing high cost barriers particularly related to remoteness.

Label of authenticity

10.12 Attempts have been made in the past to deal with issues surrounding the authenticity of Indigenous products, in order to protect both consumers and the interests of Indigenous artists. Many art centres across Australia have developed their

4 See for example Central Art Aboriginal Paintings, web site, *Provenance*, <http://www.aboriginalartstore.com.au/provenance.php>, accessed 21 March 2007.

5 Mbantua Gallery, *Submission 24*, p. 5. See also Ashleigh Wilson, 'Aboriginal art fraud rampant', *The Australian*, 9 March 2006, p.8.

6 Dr B Korman, *Submission 64*, p. 4.

7 Arts Law Centre of Australia, *Submission 36*, p. 7.

8 Arnold Bloch Liebler and the Jirrawun Arts Corporation, *Submission 59*, p. 5.

9 Arnold Bloch Liebler and the Jirrawun Arts Corporation, *Submission 59*, p.6.

own authenticity labelling systems and verification processes, but there is no national scheme in place at present which does this.

10.13 The failed 'label of authenticity' trademark scheme, administered in the late 1990s through to the early 2000s by the now defunct National Indigenous Arts Advocacy Association (NIAAA), was one such attempt to establish a nation-wide authenticity verification and labelling scheme. This scheme was set up in response to calls from many Indigenous art and craft industry representatives who were frustrated with the increasing numbers of fake Indigenous art products infiltrating the market.¹⁰

10.14 Under the label of authenticity scheme, NIAAA registered two certification marks – an authenticity mark and collaboration mark. The authenticity label was designed to signify the authentic work of an Aboriginal or Torres Strait Islander. The collaboration mark was to identify a work, such as a T-shirt, being the result of collaborative work in which an Aboriginal or Torres Strait Islander had significant creative input. A fee was charged for the processing of each application, and the fees were used to contribute towards management of the project. The marks operated under the *Trade Marks Act 1995* and were licensed by NIAAA as a not-for-profit Indigenous body controlled by Indigenous people and supported with funding from the Commonwealth. There was also an expectation that the Australian Competition and Consumer Commission (ACCC) would take action under the *Trade Practices Act 1974* if unauthorised use of the labels occurred. Although some 160 creators had used the marks, primarily the collaboration mark, since the scheme's inception, the scheme went into abeyance in 2003.¹¹

10.15 It was initially expected that the marks would provide a number of benefits, including being an easy method for consumers and retailers to identify authentic Indigenous products, serving as a focal point for efforts to promote authentic Indigenous works, and becoming a platform for educating the public about authenticity, the 'rip-off' problem and the scope of Indigenous creative expression.¹²

10.16 Despite these positive expectations, there were many criticisms of the scheme, both during its use and after its demise. Some of the criticisms were that the label was not well promoted, that it was poorly administered at the Commonwealth level, and that many artists who applied to use the mark were rejected. It became apparent that the 'one size fits all' approach did not factor in the individual needs and differing

10 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, p. 1. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

11 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, p. 2. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

12 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, pp 2–3. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

situations of Indigenous communities, and that the test for Aboriginality was too complex with over 75 per cent of applicants failing the requirements.¹³

10.17 The stylised 'tick of approval' symbol representing the mark of authenticity was also criticised, as it was thought that this was overly exclusive in that Indigenous artists not using the mark would be perceived as being inauthentic. It was suggested that some Indigenous communities, retailers and arts centres were indifferent or even hostile towards the scheme, as many regional arts and crafts centres were already using their own trademarks and logos, and did not feel the need to apply for the NIAAA marks to show their products were authentic.¹⁴

10.18 DCITA observed:

The label was not successful for a number of reasons, including being expensive and administratively complex and not distinguishing between fine art and manufactured tourist art. As such it did not have broad support across the sector. If a national Indigenous art label was to be introduced in Australia, significant research and consultation would be necessary to ensure that it was developed appropriately and was supported by Indigenous artists and art centres.¹⁵

10.19 Despite the winding up of the NIAAA scheme in 2003, a number of witnesses to the inquiry continue to seek some type of national authenticity labelling scheme for the industry. One of the groups advocating for this is the National Association for the Visual Arts (NAVA):

NAVA recommends that models for authenticity branding need to be re-examined..... 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..... 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.¹⁶

10.20 The National Indigenous Council (NIC) also supports a national authenticity scheme, rather than the current practice of authentication that differs in practice between art centres and between regions:

13 Arts Law Centre of Australia, *Trade Mark Protection and ICIP: How does Australia Fare?*, www.artslaw.com.au, accessed 28 February 2007.

14 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, pp 4–5. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

15 DCITA, Answer to question on notice, 10 April 2007 (received 24 May 2007).

16 NAVA, *Submission 27*, p. 8.

Certificates of authenticity from art centres and gallery and retail labelling can assist buyers to establish the identity and origins of works. This is especially important for resale value. Although there is currently authenticity certification available in some regions, the NIC recommends that the Government investigate the feasibility of a national scheme for authentication of works of art and craft.¹⁷

10.21 It is not just Indigenous and art advocacy groups who are concerned about the lack of a national authenticity scheme. Some retailers of and dealers in authentic Indigenous art and craft products also have concerns because, in the absence of any standardised authenticity labelling scheme, they rely heavily on consumer discretion to purchase the genuine article and are therefore competing against dealers of inauthentic products. The Rainbow Serpent galleries stated that:

There is a proliferation of aboriginal art and craft produced by non aboriginal peoples but being sold as the genuine article. Many stores which were selling authentic Aboriginal art and craft have ceased trading or only deal in fine art as they can't compete with these fakes. Since the demise of the National Indigenous Arts Advocacy Association (NIAAA) it seems as though nobody cares that this is occurring and Aboriginal people are being robbed of work that should be exclusively theirs.¹⁸

10.22 While many witnesses argued for a uniform authenticity labelling scheme, there were others who felt that this was not necessary, as there were already systems in place to deal with this problem, especially if buyers were well educated about the products they were purchasing. Professor Howard Morphy, who has long-term involvement in the field of Indigenous art, discussed this issue during the Canberra hearings:

It is good to set up a system where you have an educated buyer who will buy works that are well provenanced. In a sense that should be the guiding principle that people who are wanting to build collections of Aboriginal art follow.... All arts centres have excellent ways of provenancing work. An awful lot of the major commercial galleries do. The main galleries in places like Sydney and Melbourne have extremely good ethical practices and they will make sure that the works that they gain are authenticated... You are never, ever going to be able to stop people who do not have the knowledge being duped and you can certainly find people, just as the people who sell fraudulent share deals because the stock market is going up, who will say, 'I've got this series of Aboriginal art in the car here. It's fantastic.'¹⁹

10.23 While the education of buyers would probably work well at the higher end or fine art end of the market, this would not necessarily work with the general tourist trade in Indigenous arts and craft. Tourists often would simply want to buy a t-shirt or

17 NIC, *Submission 23*, p. 3.

18 The Rainbow Serpent, *Submission 17*, p. 2.

19 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 76.

boomerang to commemorate their visit or to buy as a gift for someone else, and would possibly be considering factors such as the cost of the goods and the aesthetics of the object as more immediate concerns than authenticity or provenance. Therefore, an authenticity labelling scheme or similar venture would involve many layers of the industry and would not be a straightforward exercise.

10.24 The Arts Law Centre of Queensland suggested that the problem lies not necessarily with the labelling or identification of Indigenous products, but with current legislation:

Similarly, while attempts and suggestions have been made to use Trade Mark and Designs laws to protect Indigenous cultural expression and traditional knowledge, ALCQ asserts that these laws are also unlikely to be a suitable means of protection. Instead, ALCQ suggests that the Government should enact a new intellectual property law, separate from but complementary to existing intellectual property laws (including copyright, trade marks, designs, patents, circuit layout rights and plant breeder's rights) to provide enforceable economic and moral rights to the custodians of Indigenous cultural expression and traditional knowledge.²⁰

Indigenous trademarks or labels in other countries

10.25 While a labelling scheme has not succeeded in Australia, the committee is aware that the experience in other countries has been different. In Canada, the 'Igloo' trademark has been in use since 1958, and appears to have been relatively successful in achieving its aim of promoting authentic Indigenous art products. The 'Igloo' trademark contrasts with the failed Australian 'label of authenticity' scheme in terms of its longevity and continued use today.

10.26 The Igloo trademark is registered with and administered by the Department of Indian Affairs and Northern Development (DIAND) in Canada. The trademark is the property of the Canadian Government and Dene, Metis and Inuit artists and craftspeople are required to apply for a licence through DIAND to use the trademark and must abide by specific conditions of use. DIAND also has responsibility for the promotion of Indigenous art and craft in the region.²¹

10.27 Goods displaying the Igloo tag are certified by the Canadian Government to be genuine Indigenous products. One Canadian Indigenous art gallery, Galerie Inuit Plus, states on their web site:

To protect the consumer and Inuit carvers, the Canadian government has registered the symbol of the igloo as a trademark. Sculptures bearing this

20 Arts Law Centre of Queensland Inc., *Submission 45*, p. 3.

21 Ross Stein, Arts Law Centre of Australia, *Trade Mark protection and ICIP: How Does Australia Fare?*, www.artslaw.com.au, accessed 28 February 2007.

"igloo tag" or sticker are CERTIFIED by the Government of Canada to be handmade by an Inuit.²²

10.28 Although the Igloo trademark has been in use for almost 50 years and has increased consumer confidence in Indigenous products while protecting the work of Indigenous Canadians, the system has been a victim to trademark imitation. The Igloo trademark has at times been faked by some manufacturers to give the impression that the Indigenous products are authentic, however the government has now restricted printing of the Igloo tag to one company to protect the trademark and any future imitation attempts.²³

10.29 So while there appears to have been some problems surrounding the imitation of the Igloo tag system, the program has apparently been successful overall. The longevity and success of the system may relate to the fact that the scheme has been managed directly by the Canadian government since its inception in 1958, and therefore resources have been consistently applied to the scheme. In addition, the government has continued to educate the public about authentic Indigenous arts and craft during this time. The committee was advised that a review is currently underway, and results will be available in coming months.²⁴

10.30 In a similar attempt to protect Indigenous works, in 2002 the New Zealand Government launched the 'Toi Iho' Maori made mark as a way to assist with the protection of the intellectual and cultural property rights of Maori artists. It was also brought in to protect the integrity of Maori culture, create a premium for Maori artworks, provide direct economic benefits to registered artists, and add promotional value to New Zealand's cultural tourism strategy.²⁵

10.31 Under the New Zealand trademark system, there are actually three marks which can be utilised. Two of these are for artists, the Toi Iho Mainly Maori Mark for those of Maori descent, and the Toi Iho Co-production Mark for Maori artists who produce work in partnership with non-Maori artists or business partners. The third mark is the Toi Iho Licenced Stockist Mark for art and craft retailers and galleries who sell the work of at least six artists and 'adopt culturally sensitive sales practices'.²⁶

10.32 Currently the system has 135 registered Toi Iho artists across a range of disciplines, and 15 Toi Iho licensed stockists. The success of this initiative in the five

22 Galerie Inuit Plus, *Authenticity of Inuit Art: Our Guarantee*, www.inuitplus.com/authenticity.asp?ID=2044, accessed 28 February 2007.

23 Ross Stein, Arts Law Centre of Australia, *Trade Mark protection and ICIP: How Does Australia Fare?*, www.artslaw.com.au, accessed 28 February 2007.

24 DCITA, Answers to questions on notice, 10 April 2007 (received 24 May 2007).

25 Te Manatu Taonga, Ministry for Culture and Heritage, *Submission 84*, p. 2.

26 Te Manatu Taonga, Ministry for Culture and Heritage, *Submission 84*, pp 2–3.

years since its inception is yet to be fully assessed and a review is being undertaken by Creative New Zealand to determine whether the program's objectives have been met.²⁷

Recommendation 16

10.33 The committee recommends that DCITA analyse the failure of the NIAAA 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 Australian scheme.

Indigenous art and the tax system

10.34 Certificates of provenance and labels of authenticity are designed to ensure that the origins of Indigenous art works are transparent to prospective buyers, and to make the primary and secondary markets for art more robust through mechanisms allowing people to trace the origins of individual works. Receipts and tax invoices perform a different function, helping to make clear who was paid, and how much they were paid, for art works. This has the potential to help prevent 'carpetbagging' and unscrupulous dealing in the market.

10.35 While certificates of authenticity or provenance may provide documentary evidence over the authenticity of the art, it does not provide a guarantee that it will be sold at a suitable price, and that the artist who created it will receive sufficient payment, or indeed payment at all.

10.36 Proof of sale, such as receipts or other such documentation, in conjunction with taxation compliance measures can be used to establish a paper trail which will undermine the carpetbaggers. Arnold Bloch Leibler and the Jirrawun Arts Corporation explain in their submission:

Awareness and understanding of tax obligations remain extremely low in Australian Indigenous communities. In many respects, the low level of understanding of and compliance with tax obligations provides fertile ground for the "carpetbaggers" to operate under the radar and ensure that their unscrupulous purchases are not open to scrutiny. This is because the "carpetbagger" can proceed reasonably confident that the transaction records and documentation usually brought into existence for tax compliance purposes will not be produced. In the result, by preying on the tax ignorance of the artist, the "carpetbagger" and its unscrupulous purchases in the field all but go unnoticed. By increasing tax compliance and creating paper trails, the "carpetbagger's" operations will be undermined.²⁸

10.37 Apart from hampering the carpetbaggers, such a mechanism would also greatly assist in bringing transparency to the Indigenous arts industry.

27 Te Manatu Taonga, Ministry for Culture and Heritage, *Submission 84*, p. 3.

28 Arnold Bloch Leibler and the Jirrawun Arts Corporation, *Submission 59*, p. 9.

The ATO's role

10.38 Evidence presented to the committee through submissions and other evidence has consistently indicated that lack of education in Indigenous communities, and with Indigenous artists in particular, was a problem and can lead to exploitation of artists.²⁹ The argument has been made that the ATO could be used as a vehicle to promote education. Mr Anthony Oliver testified that:

I think we have to put it also in a context where many people, Indigenous artists, in the north of Australia are illiterate and innumerate, and this is part of the problem. So people are easily exploited outside of an arts centre protected system because of this issue of innumeracy and there is no understanding that there are taxation issues involved. I think the taxation issue is part of the exploitation issue.³⁰

10.39 Arnold Bloch Leibler and the Jirrawun Arts Corporation see the ATO as having a positive role in educating Indigenous artists about the importance of tax compliance. They see this as crucial in terms of assisting Indigenous artists understand their tax compliance obligations and as an opportunity to contribute to the collective well-being of their communities through reducing exploitation.³¹

Potential problems

10.40 Thus far, ATO initiatives for Indigenous communities have been reported as having mixed success. Arnold Bloch Leibler and the Jirrawun Arts Corporation list some of these initiatives, and comment on their outcomes.

We are aware of the following initiatives implemented by the ATO in assisting Indigenous artists to comply with their tax obligations:

- (a) the establishment of the Aboriginal and Islander Resource Centre in 1996 which employs culturally aware tax officers to assist Indigenous persons in tax compliance issues; and
- (b) release of NAT 12066-09.2004 entitled "How tax applies to indigenous artwork" which explains how pay as you go ("PAYG") withholding, the goods and services tax ("GST") and the Australian business number ("ABN") apply to Indigenous artworks sold at art centres;

In addition to the initiatives listed above ..., the ATO has provided, over the last 10 years, the following facilities to assist Indigenous communities to comply with tax obligations:

29 Northern Territory Government, *Submission 57*, pp 19, 23.

30 Mr Anthony Oliver, Chief Executive Officer, Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 40.

31 Arnold Bloch Leibler and the Jirrawun Arts Corporation, *Submission 59*, p. 8.

- (a) establishment of the National Indigenous Project which works with internal and external stakeholders to establish and maintain relationships within communities;
- (b) the work of the Indigenous Tax Advisory Group (“ITAG”) which provides a mechanism to get discussion on delivery of government initiatives to Indigenous people and organisations;
- (c) a quick reference guide to tax obligations;
- (d) educational visits to explain the tax laws and help community organisations comply with their tax responsibilities;
- (e) seminars for community leaders, coordinators of local land councils and administrators of community organisations; and
- (f) a newsletter (launched 16 July 1998) to assist Indigenous organisations to comply with their business tax obligations.

In our collective experiences, we firmly believe this area needs additional focus by the ATO and more resourcing to allow larger scale initiatives. The ATO initiatives outlined... above have not resolved the serious lack of understanding amongst Indigenous artists of their tax obligations. There must be a significantly increased effort to educate Indigenous artists as to their tax obligations through culturally sensitive initiatives.³²

10.41 The fundamental problems remain the lack of education and familiarity by Indigenous artists with western methods of business; and their family obligations in terms of wealth distribution.

10.42 Further testimony by Mr Oliver illustrates the potential mismatch between ATO tax requirements and Indigenous family obligations:

[T]hese guys are paying 48c in the dollar already. We started that 4½ years ago with poor old Freddie here. We came clean because we felt that we could not articulate the issues if we did not lead by example. We knew that working through the tax issues gave strength to Aboriginal people because you could leverage from that. It is not like black fellows get a special deal; they do not get a special deal. Freddie pays 48c in the dollar. He had to pay back the ATO 10 years of tax, so you can imagine what it is like for him. He lives in an obligation society and he is the sole income earner for a very large family. There is a lot of pressure on people like Freddie; there is pressure on artists at Waringarri; there is pressure on artists at Warmun. They are the sole income earners, other than people who have got mining royalties or whatever. There is so much pressure on the art centres. Artists like Freddie have huge obligations. They have their own social welfare system with their capital.³³

32 Arnold Bloch Leibler and the Jirrawun Arts Corporation, *Submission 59*, pp 8–9.

33 Mr Anthony Oliver, Chief Executive Officer, Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 43.

10.43 When greater engagement with the tax system was raised with other witnesses, there was some support, but also some concerns. It is possible that greater scrutiny will end up catching 'small fish' such as artists earning modest sums, rather than the unscrupulous dealers who might be the intended target of enforcement.³⁴ The lack of educational and compliance support makes engagement with the tax system difficult for some. The committee heard, for example, that no ATO materials are produced in Aboriginal languages.³⁵ There also needs to be sensitivity to the different economic structures in Indigenous society, as well as to the lack of education of some Indigenous people. Mrs Alfonso talked about the example of an elderly artist in a remote community whose earnings from painting get distributed widely amongst her family members:

This is an old woman who does not understand and you are trying to corner her and get her to pay tax when she does not really get to keep the money. All of the money goes back into the economy anyway and exponentially grows in terms of what it brings into the Territory and into Australia. Further, people are paying taxes on what she creates as soon as it leaves her control.

We have a real problem in that these people do not speak English. They do not understand. You are going to threaten a fantastic industry. They do not pay tax, but you cannot make those people pay tax. They are never going to understand. The answer to that is education. People here are not literate... At the end of the day, I have to say that the fact that these people are supported is very small rent to pay for the real estate that Australia has. Australia can afford to wait and educate these people. It is going to take time. First contact for some of these areas was only recently. You cannot undo an economic system that is thousands and thousands of years old and expect them to pick up a new one overnight.³⁶

10.44 Improving the use of receipts for the sale of art works still presents issues. Illiteracy and innumeracy of Indigenous artists means that they may not be able to interpret the veracity of receipts and other paperwork given to them by art dealers. An unscrupulous art dealer may provide a receipt describing a handover of an artwork for \$5000, when the amount itself was only \$500. The artist would then have to pay tax on the full \$5000 notwithstanding that they only received only a fraction of that amount.

10.45 The argument that the ATO become more pro-active in terms of educating artists and establishing frameworks to help ensure provenance and scrupulous art dealer behaviour may be problematic. Previous initiatives may have been only partially successful. It is possible that efforts by the ATO to ensure tax compliance

34 Ms Marion Scrymgour, NT Minister for Arts and Museums, *Committee Hansard*, 20 February 2007, p. 6.

35 Mr John Oster, Desart, *Committee Hansard*, 21 February 2007, pp 31–32.

36 Mrs Cecillia Alfonso, Warlukurlangu Aboriginal Artists Association, *Committee Hansard*, 21 February 2007, p. 43.

could offer incidental improvements, but not be able to address the fundamental issues of exploitation in the Indigenous visual arts sector.

Dealer accreditation

10.46 It has been suggested that some type of system of accreditation for Indigenous arts and craft dealers would afford the industry better protection. Accreditation and licensing systems have long been applied to other industries, and some argue that the same could be done in Indigenous arts. As two witnesses pointed out:

The formal accreditation of art dealers is a most important and long overdue accreditation process. Doctors, dentists and builders are all accredited to statutory industry bodies- and so should all art dealers. The accreditation body should be a semi-government authority, one with teeth to regulate the conduct of members.³⁷

We would definitely agree that there needs to be some sort of accreditation or licensing system for Indigenous art dealers. I think that is one way of providing some sort of standard—having a set of criteria that people have to meet in order to work in this area... it is not unusual to see professionals being required to be accredited and maintain their accreditation. If they do the wrong thing then action can be taken against them and they can lose the ability to practice in that particular area. Lawyers, doctors, real estate agents—there is a gamut of people working in professions where they have to be accredited.³⁸

10.47 There is strong support for the concept of an accreditation system for dealers, even by some of the dealers themselves. One of the reasons for this is that some of them feel that it is the unscrupulous dealers who bring a bad name to the industry through exploitation of the artists. They see regulation of the industry as a benefit to those who wish to do the right thing. One Indigenous art dealer expressed his support for accreditation to the committee by stating:

You are heading in the right direction. You can understand that where there is a market that is fairly unregulated—and situations that are unregulated—there is more opportunity for exploitation. That does not mean to say that it happens every time. But the opportunities are there. One of the things that the committee may look at, too, is the notion of accreditation of people dealing in Aboriginal art. If you compare the situation you mentioned with the arts centre models, they are vastly different in terms of the opportunities for exploitation.³⁹

37 Mr Michael Reid, *Submission 2*, p. 4.

38 Ms Robyn Ayres, Arts Law Centre of Australia, *Committee Hansard*, 23 February 2007, pp 81–82.

39 Mr Wally Caruana, Caruana Fine Arts, *Committee Hansard*, 9 February 2007, p. 31.

10.48 There are concerns however, about how such a system of accreditation could be readily introduced and established into the industry. Papunya Tula Artists raised such concerns:

It is something that could be considered. How you introduce that monitor, I have no idea... I was thinking about it over the weekend and an ad for a furniture business cropped up on television. At the end of the commercial they made it a point to note that this company was an accredited furniture removalist business who was therefore monitored by the Institute of Furniture Removalists. I thought, 'You have to be accredited to move a chair from Sydney to Perth and yet millions of dollars are flying around the country virtually completely unmonitored.' I believe there is room for consideration. I would not know where to start in terms of introducing it but it is something that could be thought about.⁴⁰

10.49 Even if some type of accreditation system were established, questions have been raised about how people would be eligible to be considered for accreditation, and what the criteria would be:

What that licensing or accreditation would be based on is something that would be very contentious, and it would be very long and involved to determine who was eligible and what would restrict people from being approved, accredited or licensed... I am not completely sold on something being set up to nationally license dealers in the Aboriginal art industry, but it is certainly worth looking into. What would be difficult would be breaking it down into what the terms of reference were and what made people eligible to be licensed through that system.⁴¹

10.50 Also of concern is the issue of how a system of accreditation within the Indigenous arts industry would be monitored and policed. It has been suggested that it would require significant resources and funding to manage such a system. Despite this concern however, the ACCC did note there are existing accreditation frameworks under which the industry could apply a scheme:

There is a process under the Trade Practices Act called the authorisation process and, if the industry wanted to have an accreditation process not organised by the commission but organised by industry, that process could be authorised by the commission if there was a public benefit that outweighed the effect on competition.⁴²

10.51 In this regard, there is also an issue regarding the maturity of industry organisations in the sector. The committee notes that both the Australian Commercial Galleries Association and the Australian Indigenous Art Trade Association effectively allow membership by invitation only. The process for application to the ACGA is:

40 Mr Paul Sweeney, Papunya Tula Artists Pty Ltd, *Committee Hansard*, 21 February 2007, p. 14.

41 Mr Paul Sweeney, Papunya Tula Artists Pty Ltd, *Committee Hansard*, 21 February 2007, p. 16.

42 Mr Michael Kiley, ACCC, *Committee Hansard*, 23 February, p. 66.

When an individual applies or is invited to approach the ACGA, the processes operate in the following way:

- 1 Interested party is proposed by state members or contacts ACGA and is sent 'Information about Membership'.
- 2 Application form is submitted with all required support material.
- 3 The applicant's nomination is circulated for approval at state level.
- 4 Subject to state approval, all members are informed of the membership nomination.
- 5 Subject to national response, full application is viewed and presented for ratification to the National Board of Management or a nominated sub-committee of members.
- 6 Applicant is notified of the outcome by mail.

Applicants are asked to respect that for reasons of member confidentiality the ACGA upholds the right to reject applications at its absolute discretion and without reason.⁴³

10.52 Art.Trade indicates that 'Membership is by invitation only and is not transferable' and the process is similar as for the ACGA:

Every applicant for membership must be proposed by one and seconded by another financial Member of the Association.

Application for membership shall be made in writing to the Secretary and shall be signed by the applicant and its proposer and seconder and shall be in such form as the Board may from time to time prescribe.

The Secretary shall advise Members of the application and request them to advise the Board within 30 days as to any objection that they may have to the applicant's grant of membership.

All objections to proposed membership shall be treated in confidence, both by the objector and the Board. Within ninety days the Board shall decide the admission or rejection of the applicant and advise its decision to the Secretary. The decision to admit an applicant to membership requires a two-thirds majority of the Board.

The Secretary shall advise the applicant of its acceptance or rejection. In no case shall the Secretary be required to give any reason for the rejection of an applicant.⁴⁴

10.53 These procedures appear to lack transparency. They could be used by members to prevent access of others with whom they are in commercial competition, or against whom they merely have personal animosities. The committee has also

43 ACGA, Information about membership, <http://www.acga.com.au/membership.doc>, accessed May 2007.

44 Art.Trade, Membership conditions for Art.Trade, <http://www.arttrade.com.au/membership.htm>, accessed May 2007.

observed that while many retailers of Indigenous art are members of one or the other organisation, a large number are members of neither.

10.54 The low density of industry association membership, the restrictive rules governing access to the associations, and the lack of transparency in the process, all have the potential to act as barriers to effective industry organisation. This in turn has the potential to inhibit effective industry organisation and the capacity for dealer accreditation to operate, should it ever be desired.

10.55 The committee considers that both the Australian Commercial Galleries Association and Art.Trade should review and reform their joining requirements to create a more open procedure not reliant on invitation by an existing member.

Indigenous Art Commercial Code of Conduct

10.56 Many of the organisations representing the interests of Indigenous art industry participants do have codes of ethics or conduct in place which members of that body are expected to abide by. The Australian Indigenous Art Trade Association (Art.Trade) is one such organisation:

Art.Trade was established in 1998 as a national body to set standards of excellence in all dealings in Indigenous art. All Members are bound by our Code of Ethics and Code of Business Practice. Currently Art.Trade has 26 financial members in all States and Territories.⁴⁵

10.57 Art.Trade's Code of Ethics includes stipulations that their members must:

- work toward offering high quality uniform documentation in association with community authorised bodies;
- treat all artists fairly and ensure equitable and timely returns to artists;
- exhibit honesty and integrity in its dealings with the public, artists, other dealers and other industry organisations;
- refuse to deal with anyone who violates Indigenous copyright or improperly appropriates Indigenous imagery; and
- be responsible for the proper disclosure of information relating to the authorship and provenance of any work exhibited.⁴⁶

10.58 In addition, Art.Trade's Code of Business Practice asserts that members must not:

- approach any artist to exhibit his or her work if this would be in direct conflict with that artist's existing representation;

45 Australian Indigenous Art Trade Association, *Submission 19A*, p. 1.

46 Australian Indigenous Art Trade Association, *Submission 19*, Appendix A.

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- hold out itself as representing an artist without an agreement with that artist or the artist's agent;
 - act in any way that may undermine exhibitions at another member's gallery.⁴⁷

10.59 Similarly, the Australian Commercial Galleries Association (ACGA) operates under a code endorsed by the National Association for the Visual Arts (NAVA) and the Australia Council for the Arts. This Code covers issues such as the fair negotiation of payments between artists and galleries, the artist's copyright rights, the protection of the moral rights of the artist and the proper identification of the artist's works.⁴⁸ This is a broad Code that is applicable right across the visual arts sector, and by default also caters for those involved in the Indigenous arts industry.

10.60 While such guidelines are useful in terms of ensuring the members of the various industry bodies practice acceptable behaviour in their dealings within the Indigenous arts and craft market, there are some issues. It is not compulsory for Indigenous art dealers/traders/artists to join an organisation with a code of practice. If they do join, such codes are 'voluntary' and are not necessarily legally enforceable (other than through possible expulsion from the organisation). It seems unlikely that an unscrupulous dealer would want to join such an organisation, and they would thus avoid any restrictions on their questionable activities that a code might have created. As Desart points out:

It is instructive that both the Australian Commercial Galleries Association and The Australian Indigenous Art Trade Association (Art Trade) have substantial clauses in their published Code of Ethics and Code of Business Practice that prohibit members from exhibiting works in conflict with the artist's existing representation as one of the most fundamental tenets of sound trading. It is unfortunate that membership of these associations is comparatively low and that many non-member galleries are either unaware of such codes or are unwilling to comply with their principles.⁴⁹

10.61 Another problem is that such codes of conduct might be catering for the individual organisation's requirements and ideologies, and not necessarily those of the industry as a whole.

10.62 In recognition of this, there is an industry-wide code of conduct – the Indigenous Art Commercial Code of Conduct – currently being drafted by NAVA in conjunction with Desart, the Association of Northern Kimberley and Arnhem Aboriginal Artists (ANKAAA), and supported by the Australia Council for the Arts.

47 Australian Indigenous Art Trade Association, *Submission 19*, Appendix A.

48 Australian Commercial Galleries Association, web site, *Visual Arts Code of Practice*, http://www.acga.com.au/Visarts_code_of_practice.pdf, accessed 15 March 2007.

49 Desart, *Submission 49*, p. 20.

10.63 The proposed code of conduct is due to be finalised sometime during the first half of 2007, and the code aims to cover such issues as:

- the promotion of practices to support Indigenous artists, their culture and communities;
- the promotion of practices to ensure a fair economic return to Indigenous artists;
- the encouragement of ethical practice in all dealings throughout the Indigenous art industry;
- to provide a set of standards that will set an industry benchmark; and
- contribute to the discussion of ethical trader strategies.⁵⁰

10.64 The development of an industry-wide code of conduct has received positive support from various key players in the industry, and during the inquiry many witnesses indicated such support, including the Northern Territory Government:

The art industry, led by both ANKAAA and Desart, has put out a code of conduct. I think that certainly needs to be given the support and commitment across government. As a government, we have signed up to the national code, and we will be putting that code across all our government agencies when dealing with Aboriginal people and their art—in any of our government papers and the contents of those papers. That is the commitment we have given.⁵¹

10.65 Also in supporting a code of conduct, Art.Trade stated:

Voluntary adoption of a code of ethical practice should help to reduce the number of exploitative operators and increase the overall understanding of what constitutes ethical behaviour in the industry. More ethical behaviour by purchasers will lead to greater demand for work provided through ethical channels. Ultimately this benefits artists and ethical dealers.⁵²

10.66 However, Art.Trade also highlighted concerns about the ability of a national code of conduct to fully address the problems that were impacting on the industry because of the difficulties of enforcing such a code:

Art.Trade's experience in enforcing its own Code of Ethics underscores the difficulty of effectively enforcing any industry-wide code of conduct such as that currently being developed by the Australia Council and NAVA. The establishment by Art.Trade of an Indigenous Cultural Council helped the Association in its investigation of possible breaches of its Code of Ethics. We suggest that the Senate Committee give careful consideration to

50 NAVA, Desart and ANKAAA, *National Indigenous Code of Conduct, Section 1, Introduction: Discussion Paper*, 2006, p. 3.

51 Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, *Committee Hansard*, 20 February 2007, p. 6.

52 Australian Indigenous Art Trade Association, *Submission 19*, p. 3.

mechanisms for encouraging adoption and compliance with a national code, perhaps including an investigative mechanism similar to Art.Trade's Indigenous Cultural council.... Despite difficulties with enforcement, we support the establishment of a national code of commercial conduct for Indigenous artists and have contributed to the work of NAVA as a member of the reference Group for development of the code.⁵³

10.67 It was suggested by the Northern Territory Government that one of the ways in which the enforcement of a national code of conduct could be improved would be through public education and improved advocacy:

Because the code of conduct is a voluntary one there is the need for wider education and advocacy to that sector to get that message through. With the Commonwealth government, the Northern Territory government and the sector there may be a few that will get caught up in that bureaucracy we certainly need to work towards a consistent scheme in relation to that.⁵⁴

10.68 Other government bodies have also recognised the benefits that some kind of code of conduct can bring to the industry. For example the Melbourne City Council has recently taken the initiative to introduce government managed guidelines, implementing the 'Code of Practice for Galleries and Retailers of Indigenous Art'. The code was designed to guide City of Melbourne-based galleries and retailers in appropriate ways to sell and display Indigenous art. The code also guides galleries and retailers in how to conduct their dealings with Indigenous artists, and provides a statement of principles to set a standard of acceptable industry practice and fair dealing.

10.69 The Melbourne City Council's Code of Practice was developed to:

- promote ethical practice in the sale of Indigenous arts products and services by City of Melbourne-based commercial and public galleries and retail outlets by encouraging the sale of authentic Indigenous products and services; promote fair and respectful relationships; and
- promote the sale of Victorian Indigenous artists' products and services.⁵⁵

10.70 Galleries and retailers are invited to subscribe to the Melbourne City Council code by entering voluntarily into a 'Code Agreement', renewed on an annual basis through subscribers providing evidence of compliance. Subscribers to the code are

53 Australian Indigenous Art Trade Association, *Submission 19*, p. 3, and *Submission 19A*, p. 2.

54 Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, *Committee Hansard*, 20 February 2007, p. 14.

55 City of Melbourne, *Annual Report 2005-06*, 'Our performance', http://www.melbourne.vic.gov.au/rsrc/PDFs/AnnualReport/2005_06/AnnualReport2005-06Part2.DOC, accessed 15 March 2006; Japingka Indigenous Fine Art Gallery, 'Code of Practice for Galleries and Retailers of Indigenous Art', *Submission 2*, Attachment.

recognised as an 'Accredited gallery or retailer' and their details displayed by the City of Melbourne. The promotion of accredited galleries and retailers includes branding stickers and labelling, and the Melbourne City Council is also investigating the creation of an Award for Ethics in the sale of Indigenous Art as part of the annual Melbourne Awards.⁵⁶

Recommendation 17

10.71 The committee recommends that that Indigenous Art Commercial Code of Conduct be completed as soon as possible.

Recommendation 18

10.72 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 (see also recommendations 23, chapter 10 and 28, chapter 14).

Conclusion

10.73 While this chapter has examined specific proposals to help solve problems being experienced by the industry, it is important to consider the effectiveness of these solutions in a broader context. As Art.Trade pointed out, issues such as authenticity should not necessarily be dealt with separately from other problems that impact on the industry:

Exploitation and fraud harm everyone associated with Aboriginal art and it is essential that all interested parties work together to address these important issues. This requires a wide and inclusive process of consultation with artists, community art centres, dealers, galleries and experienced buyers, looking at the main issues as an interacting system and not considering particular issues (such as authenticity) in isolation from the whole system.⁵⁷

10.74 A mechanism such as an authenticity labelling scheme attempts to deal with one particular issue affecting the industry. In contrast, a voluntary code of conduct is a more general mechanism which attempts to address a variety of concerns and improve practices throughout the industry as a whole.

10.75 The committee heard a range of suggestions about improving conduct in the industry, and there is clearly a good deal of support for, and interest in, the Indigenous Art Commercial Code of Conduct development process currently being led by NAVA and other key organisations. The committee thought the comments by Art.Trade toward the end of the inquiry were significant:

56 Japingka Indigenous Fine Art Gallery, 'Code of Practice for Galleries and Retailers of Indigenous Art', *Submission 2*, Attachment, p. 4.

57 Australian Indigenous Art Trade Association, *Submission 19*, p. 2.

In our submission we said that we primarily supported a voluntary system of registration for anybody who is active in the Indigenous visual arts market. Having had further discussion with members of our board, we can certainly see in the submissions and discussion which your committee has already had that a sound case can be made for at least a little more government intervention in relation to the operation of the market.

So, while we are not unequivocally supporting a more regulatory approach, we are saying that, as a group of people active in Indigenous art trade, we would be willing to support the licensing of dealers in Indigenous art whose turnover exceeds, say, \$50,000 a year, with a requirement that anybody active in that way would be required to register and sign a commitment to a minimum set of ethical standards and practices derived from the commercial code of conduct being developed by NAVA. As I say, this is a shift in our position, saying that we think there may be a degree of enforcement needed in the form of both registration and licensing.⁵⁸

10.76 The committee believes the development, dissemination and adoption of the Indigenous Art Commercial Code of Conduct is likely to be a crucial step in restoring confidence in parts of this industry. This may include subsequent development of specific standards for industry conduct under the code's general principles. It is also crucial that

- lines of responsibility for implementing a code are made clear;
- there is a mechanism for review of the effectiveness of the code; and
- mechanisms by which complaints of breaches of a code can be addressed in a transparent and enforceable manner.

The committee believes all stakeholders in the sector can work toward ensuring these conditions will be met. It commends this process to all in the industry.

Recommendation 19

10.77 The committee recommends that the NAVA 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.

Recommendation 20

10.78 The committee recommends that, once completed, all stakeholders in the industry examine, disseminate and adopt where relevant the Indigenous Art Commercial Code of Conduct.

58 Mr Martin Wardrop, Australian Indigenous Art Trade Association, *Committee Hansard*, 10 April 2007, p. 2.

10.79 The committee recognises that development of a code of conduct is only a first step. It acknowledges that, as Art.Trade observed, some form of government intervention may be necessary to ensure that a code of conduct has the desired effect.

10.80 In 1998, the Commonwealth amended the Trade Practices Act to include fair trading provisions that allowed statutory recognition of industry codes of conduct. These provisions allow the ACCC to play a role in enforcing fair business practices under codes of conduct that have been prescribed in regulations.

10.81 The law recognises three scenarios in which the ACCC may act on industry codes. The first two involve codes that are prescribed under the Act:

- Mandatory codes are binding on all industry participants.
- Voluntary codes are only binding on those members of an industry or profession who have formally subscribed to the code. Prescribed voluntary codes could, for example, apply only to members of the industry association administering the code.⁵⁹

10.82 The third scenario is where the ACCC may be guided by any other industry code (ie. one that has no formal status under the Act) in certain circumstances, such as when bringing a court case in connection with unconscionable conduct:

the Court may have regard to a list of eleven factors, including ... the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with the code.⁶⁰

In all cases, the ACCC is able to use the codes to assist in ensuring that business practices in a sector are fair.

10.83 The committee is supportive of ensuring the ACCC has the capacity to play a role in cleaning up any unethical business practices in the Indigenous arts industry, which is why it has recommended further funding for its activities in the Indigenous arts sector (see chapter 9). However, it recognises that increasing the ACCC's effectiveness may be enhanced by giving recognition to an Indigenous art industry code under the Trade Practices Act.

10.84 In 1999, policy guidelines were issued to explain the process and circumstances under which an industry code of conduct might become a recognised code under the Trade Practices Act, which would then give the ACCC a strong role in ensuring the code was honoured. These guidelines indicate that industry self-

59 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, pp 3–4.

60 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, p. 4.

regulation remains the preferred option. The guidelines set out criteria that must be satisfied before a code of conduct will be prescribed under the Trade Practices Act:

- the code would remedy an identified **market failure** or promote a **social policy objective**; and
- the code would be **the most effective means** for remedying that market failure or promoting that policy objective; and
- the **benefits of the code to the community as a whole** would outweigh any costs; and
- there are **significant and irremediable deficiencies** in any existing self-regulatory regime – for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems; and
- a **systemic enforcement issue** exists because there is a history of breaches of any voluntary industry codes; and
- a range of self-regulatory options and 'light-handed' quasi-regulatory options has been examined and **demonstrated to be ineffective**.⁶¹

10.85 The committee believes that many in the sector would argue that some of these conditions have already been met. For example, there appears to be wide support for a social policy objective of ensuring some of Australia's most disadvantaged citizens are not ripped off by unscrupulous operators exploiting their market power.

10.86 However, it is too early to say whether all these conditions are met. In particular, the committee believes the new Commercial Code of Conduct, and the industry associations that will have a stake in its implementation, must be given an opportunity to reform practices in the sector.

10.87 If problems persist with fair business practices in Indigenous art, the committee believes it may be appropriate to review this situation and consider movement toward a prescribed code of conduct under the Trade Practices Act. The committee notes that this would require extensive consultations by DCITA, and the preparation of a Regulation Impact Statement.⁶²

10.88 The committee notes that the industry's capacity to self-regulate will obviously affect whether further government intervention is required. If the industry wishes to avoid operating under a prescribed code of conduct, participants need to take steps to ensure that trade in the sector is fair. Some responsibility in this area must fall on the industry associations – ACGA and Art.Trade. This is why the

61 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, pp 7–8, emphasis in original.

62 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, pp 14–16.

committee has made some observations about the associations ensuring they have membership and procedures that maximise their ability to ensure that business practices in their industry are sound. The committee hopes that all industry participants will commit to fair business practices in an environment supported by the new code of conduct

Recommendation 21

10.89 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.

10.90 Finally, there was one area of policy that could contribute to the integrity of the art market, which went almost unmentioned by all stakeholders: the use of purchasing policies by collecting institutions. One submitter mentioned that he had sought advice from ten major public art galleries about their Indigenous art acquisition and display policies. Of the ten, only three replied, and those replies were not always clear as to what the policies contained.⁶³

10.91 The committee notes that few art collecting institutions engaged with this inquiry, and none provided information in this area.⁶⁴ As 'market leaders', these institutions play a significant role in modelling ethical conduct in the sector. The committee believes this is an opportunity for all collecting institutions to take a stand against carpetbaggers and unethical dealers.

Recommendation 22

10.92 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.

10.93 The committee also encourages all buyers of Indigenous art to only purchase works in a manner consistent with the Commercial Code of Conduct, and from dealers or art centres that have agreed to the Code.

10.94 The committee did not pursue this matter, however it notes that few public galleries engaged with this inquiry, and none provided information in this area.⁶⁵ As 'market leaders', these institutions may play a significant role in modelling ethical

63 Mr Alec O'Halloran, *Submission 48*.

64 The committee does however note the valuable contribution of a number of Indigenous art curators – see for example *Submission 42*.

65 The committee does however note the valuable contribution of a number of Indigenous art curators – see for example *Submission 42*.

conduct in the sector. The committee believes this is a matter that may warrant further attention, and addresses it in a recommendation below.

10.95 The committee considers that, once the Indigenous Art Commercial Code of Conduct development process has been concluded, the ACGA and Art.Trade review their membership and monitoring processes, to include:

- commitment and adherence to the Indigenous Art Commercial Code of Conduct as a condition of membership; and
- greater transparency and accessibility of processes for addressing complaints against their members.

Recommendation 23

10.96 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:

- **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.**

Chapter 11

Indigenous cultural and intellectual property rights

11.1 This chapter discusses issues relating to Indigenous cultural and intellectual property (ICIP) rights and Indigenous communal moral rights (ICMR). Evidence to the inquiry has suggested that current intellectual property laws and moral rights legislation may not provide adequate protection of Indigenous cultural and intellectual property and Indigenous communal moral rights.

11.2 'Intellectual property' is an umbrella term for various legal entitlements which attach to certain names, written and recorded media, and inventions. The holders of these legal entitlements are generally entitled to exercise various exclusive rights in relation to the subject matter of the intellectual property. Intellectual property can be an invention, trade mark, original design or the practical application of an idea.¹

11.3 Intellectual property laws provide creators and inventors with certain economic rights to exploit their creations and inventions. Through international treaties such as the Berne Convention, intellectual property rights are enforceable internationally in countries which have signed such treaties in recognition that intellectual property rights are important economic rights.²

11.4 The following intellectual property rights are recognised by Commonwealth legislation:

- artistic, dramatic and literary works and publications under the *Copyright Act 1968*;
- registered industrial designs relating to commercial products under the *Designs Act 2003*; and
- trade marks identifying the origin of goods and services under the *Trade Marks Act 1995*.³

Indigenous cultural and intellectual property

11.5 Indigenous cultural and intellectual property refers to the rights of Indigenous Australians to their heritage:

1 IP Australia web site, www.ipaustralia.gov.au, Accessed 29 May 2007.

2 T Janke and M Frankel, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, 1998, p. 51. Hereafter referred to as *Our Culture*.

3 Other legislation includes the *Patents Act 1990* and the *Plant Breeders Rights Act 1994*. These are not discussed in the paper as they do not relate directly to Indigenous arts issues. Other common law intellectual property rights include breach of confidence laws.

Heritage consists of the intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural identity.⁴

11.6 The Myer Report into the contemporary visual arts noted that for Indigenous cultures, intellectual property rights are an integral component of their cultural heritage.⁵ The nature or use of Indigenous heritage material is such that it is transmitted or continues to be transmitted from generation to generation. It is also regarded as belonging to, or originating from, a particular Indigenous group(s) or its territory.⁶

11.7 Indigenous cultural and intellectual property rights have been characterised as including the right of Indigenous people to:

- define what constitutes Indigenous cultural and intellectual property;
- own and control Indigenous cultural and intellectual property;
- be recognised as the primary guardians and interpreters of their cultures;
- authorise the use of Indigenous cultural and intellectual property according to Indigenous customary law; and
- be given full and proper attribution for sharing their heritage.⁷

11.8 Indigenous notions of cultural and intellectual property differ markedly from non-Indigenous notions of intellectual property. For instance, under Indigenous customary law, intellectual property rights are communally owned whereas under non-Indigenous laws these rights are owned by individual creators. Under Indigenous customary law, intellectual property rights are generally not transferable but transmission, if permitted, is based on a series of cultural qualifications. Under non-Indigenous laws intellectual property can be freely transmitted and assigned, usually for economic returns for a set time and in any medium. Intellectual property right holders can decide how or by whom the information can be transmitted or assigned. In addition, Indigenous customary law emphasises preservation and maintenance of culture, whereas non-Indigenous laws place an emphasis on economic rights.⁸

4 *Our Culture*, p. xvii.

5 Myer Report, p. 150.

6 T. Janke and R. Quiggin, *Indigenous Cultural and Intellectual Property: The Main Issues for the Indigenous Arts Industry in 2006*, May 2006, p. 10. Hereafter referred to as the ICIP Paper.

7 ICIP Paper, p. 10; *Our Culture*, pp 47–48. Indigenous customary law is the body of rules, values and traditions that are accepted by the members of an Indigenous community as establishing standards or procedures to be upheld in that community.

8 *Our Culture*, pp 75–76; ICIP Paper, pp 11–12.

11.9 Submissions and other evidence argued that there is inadequate protection of ICIP, which has a detrimental impact on both cultural and financial outcomes for artists. Ms Ayres, Executive Director of the Arts Law Centre of Australia, stated that:

One big issue that always comes up when we are talking to Indigenous artists, particularly in the workshops that we give, is the need for the better protection of Indigenous culture and intellectual property. The Australian legal system just does not provide adequate protection.⁹

11.10 The Arts Law Centre of Australia identified some of the major concerns in relation to ICIP:

- lack of copyright protection of art and craft works produced by Indigenous communities;
- lack of protection for the traditional knowledge of communities contained within art and craft works;
- lack of understanding by non-Indigenous people of the collective ways in which some Indigenous artworks may be produced which may potentially affect authenticity; and
- the potential for non-Indigenous interests to exploit Indigenous words, names, symbols and other aspects of culture without redress being available to Indigenous custodians.¹⁰

11.11 Submissions argued that existing intellectual property laws are inadequate in recognising and protecting Indigenous cultural and intellectual property and these issues are discussed below. The Myer Report recommended that the relevant Commonwealth departments take action in relation to Indigenous intellectual property issues, including the misappropriation of Indigenous cultural imagery and iconography.¹¹

Copyright

11.12 Copyright is a set of specific rights granted by statute to creators of artistic and cultural material. The law protects categories of works under the *Copyright Act 1968* from unauthorised use and dissemination.

11.13 Copyright protects the creative works of Indigenous visual artists and craft practitioners to the same extent that it protects material created by non-Indigenous artists. However, there are gaps between the protection given to cultural material under the Australian legal system, and the rights and obligations in relation to cultural material under Indigenous customary law.

9 Ms Robyn Ayres, Arts Law Centre of Australia, *Committee Hansard*, 23 February 2007, p. 78. See also Mr Kim Willison, Artmark Australia, *Committee Hansard*, 11 April 2007, p. 50.

10 Arts Law Centre of Australia, *Submission 36*, p. 9.

11 Myer Report, p. 158.

11.14 The following requirements must be met for copyright to exist in a work. As noted below, much Indigenous cultural material does not meet these criteria.

- Originality – for copyright to exist in a work, the work must be original. This may pose problems for Indigenous art works. As a continuing expression of culture, many Indigenous people draw on their cultural heritage by, for example, painting pre-existing clan designs which have been handed down from their ancestors. It is this nature of Indigenous art that has raised the question of whether a new Aboriginal work, based on, or derived from, a traditional pre-existing theme, could satisfy the copyright requirement of originality.
- Material form – a work must be written down or recorded in some permanent, tangible form. Some forms of Indigenous art are ephemeral such as body painting and sand paintings. These may not be protected under copyright.
- Identifiable author – there must be an identifiable author, or authors, for copyright to exist in a work. Given the nature of Indigenous art an individual person or persons may not always be identifiable. For example, in rock art painting it may not be possible to identify a single artist or group of artists and copyright cannot be claimed.¹²

11.15 Copyright protection does not protect styles, methods or ideas. By way of contrast, Indigenous communities generally recognise ongoing rights in relation to particular images and styles.¹³

11.16 The duration of copyright protection is generally the life of the artist plus 70 years. The Act does not recognise any continuing right of Indigenous custodians to their ICIP after the term of copyright protection has expired. Yet cultural works remain part of an Indigenous group's culture and are of great significance to their traditional custodians in perpetuity.¹⁴ The Myer Report noted that the current time limit on copyright protection is inconsistent with Indigenous concepts of cultural heritage and traditional knowledge and that in any future review of the term of copyright, the particular needs of Indigenous visual artists should be taken into consideration.¹⁵

11.17 Various reforms to the Copyright Act were suggested. NAVA argued that the Copyright Act should be amended so that the copyright in works produced by Indigenous artists under certain employment arrangements should remain with the

12 T. Janke and R. Quiggin, *Indigenous Cultural and Intellectual Property and Customary Law*, Law Reform Commission of WA, 2005, pp 458–459. Hereafter referred to as Background Paper. See also ICIP Paper, pp 52–55.

13 Myer Report, p. 151.

14 Background Paper, pp 459–461.

15 Myer Report, p. 153.

artist. NAVA suggested that Indigenous artists employed under CDEP schemes, for example, should retain copyright in the works they produce.

11.18 In addition, NAVA suggested that the Government develop 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.¹⁶

11.19 An alternative approach was advocated by Janke and Frankel. They argued that specific legislation which protects all Indigenous cultural and intellectual property is preferred over amendments to the Copyright Act. The specific legislation would recognise Indigenous cultural ownership in Indigenous visual arts and craft, and literary and dramatic works; and 'provide rights in that material which allow Indigenous people the rights of prior consent and to negotiate rights for suitable use'.¹⁷

Registered designs

11.20 Under the *Designs Act 2003* 'design' is defined in the following terms:

'Design' in relation to a product, means the overall appearance of the product resulting from one or more visual features of the product.

11.21 The designs laws protect designs as they are applied to products and items. Under Indigenous customary laws, a design or motif belongs to a certain Indigenous cultural group, and there are laws that govern who can use and reproduce this material. The designs law applies to Indigenous designs as it does to all designs that meet the requirements for protection. There is, however, no special protection for Indigenous designs or cultural material under the Designs Act.

11.22 A design can only be registered in relation to a 'product' – it is not possible to register a design itself. A 'product' is 'a thing manufactured or hand made'. Certain Indigenous designs such as clan insignia may not be commercially applied to a product, therefore they are not registrable as a design under the Designs Act.¹⁸

11.23 Under the Act, protection for registered designs exists for a maximum of 10 years. Once design protection expires the registered designs are able to be used by any person.

11.24 Indigenous peoples' right to use their communally-owned designs, and to exclude use by others under their customary law, is a cultural practice that continues in many Aboriginal communities:

16 NAVA, *Submission 27*, p. 10.

17 *Our Culture*, p. xxix.

18 Background Paper, pp 471–472; *Our Culture*, pp 63–64.

The limited term of protection for designs limits the rights of Indigenous cultural custodians to control the use of their sacred motifs or clan identified designs outside this period. Once the period has expired, any person, either inside or outside a cultural group, can use an Indigenous motif or design without seeking proper consent under customary law.¹⁹

11.25 Under the Act, generally, the person who creates the design or a person who employs the creator may register a design. There is no recognition of the communal ownership of the design as belonging to a cultural group or groups which is more applicable to Indigenous groups.

11.26 The Act protects certain items for industrial or commercial purposes. One study noted that it would be difficult to use the designs law to protect Indigenous designs that are protected under customary laws – 'protection under the Act is focussed on the commercial production of products and it would be necessary to be the producer of such products'.²⁰ The study noted however, that the Act may offer some protection for commercially applied Indigenous peoples' designs that meet the registration requirements.²¹

11.27 Reform of the Designs Act was suggested by some submitters. NAVA argued that the Designs Act should be amended to include provisions for the registration of Indigenous cultural designs, and that the period of protection for such designs should be in perpetuity or the life of the Indigenous owner community.²²

11.28 Janke and Frankel argued that specific legislation which protects all Indigenous intellectual property is preferred over amendments to the Designs Act. However, the authors argued that to the extent that the Designs Act can provide protection for Indigenous communities who wish to commercially exploit their designs, the Act and its registration process:

...should allow for registration of group interests so that Indigenous communal ownership of cultural designs is recognised. This might be done by allowing trusts and other group entities to become the registered proprietors of a registered design.²³

Trade marks

11.29 A trade mark is a sign used to indicate the trade origin or source of goods or services. Some Indigenous groups and individuals have complained about the use of Indigenous cultural material as business names and trade marks by non-Indigenous people and businesses.

19 Background Paper, p. 473.

20 Background Paper, p. 475.

21 Background Paper, p. 475.

22 NAVA, *Submission 27*, p. 10.

23 *Our Culture*, p. xxx.

11.30 Once a trade mark is registered, the registered owner will be granted a type of property right to use that trade mark in association with the trade in question. Trade marks are personal property and can be licensed, assigned and transmitted. Once registered, the trade mark is protected for 10 years, which may be renewed, in sets of 10 years, for as long as the registration is kept current.²⁴

11.31 One study noted that in this respect trade mark registration is continuous and can be used to protect Indigenous cultural material for longer periods of time, even beyond the copyright period – 'this feature of trade marks law makes it more flexible than copyright, designs and patents for protecting Indigenous rights because the problem of the public domain may be avoided'.²⁵

11.32 The *Trade Marks Act 1995* allows third parties to oppose the registration of a trade mark. Grounds for opposition include that the trade mark does not distinguish the applicant's goods and services from the goods and services of others; is scandalous or contrary to law; or is likely to deceive or cause confusion.²⁶

11.33 One study noted that Indigenous people may be able to make use of the restrictive provisions under the Trade Marks Act to challenge culturally offensive trade marks that are scandalous or contrary to law:

It is arguable that trade marks which make use of sacred material are scandalous and contrary to Indigenous customary laws. Perhaps there is scope for an Indigenous community to challenge marks that are against customary laws as scandalous marks. It may at least be possible to draw offensive use to the attention of the registrar [of trade marks].²⁷

11.34 One study argued that amendments to the Trade Marks Act should be considered. These would provide that Indigenous and non-Indigenous persons and/or companies would be able to obtain registration of marks containing Indigenous designs, words or symbols with the consent of the particular Indigenous community and if other conditions regarding cultural appropriateness are met.²⁸

Certification marks

11.35 The Trade Marks Act has provisions that allow for the registration of certification marks. Certification marks are trade marks which are used to distinguish goods or services which possess a certain quality, accuracy or characteristic. A mark

24 *Our Culture*, pp 68–71; Background Paper, pp 475, 477.

25 Background Paper, p. 477. The notion of the public domain refers to what is freely available for use and reproduction without the need to obtain permission from the intellectual property owner.

26 *Our Culture*, pp 70–71; Background Paper, p. 476.

27 Background Paper, p. 476.

28 *Our Culture*, p. xxxi.

or label verifying that a product or service is authentically Indigenous could be registered as a certification mark under the Trade Marks Act.

11.36 An example of this approach is the National Indigenous Arts Advocacy Association's (NIAAA) label of authenticity system launched in 2000. NIAAA registered two certification marks – an authenticity mark and a collaboration mark. The label of authenticity is the primary mark that, when affixed to goods or services, denotes that a product or service is created wholly by an Indigenous person. The collaboration mark denotes that a genuine Indigenous work has been reproduced under a legal licensing agreement. The label of authenticity scheme is discussed further in chapter 10.

Need for specific legislation

11.37 As noted above, some submissions and studies argued for the introduction of *sui generis* (specific) legislation to protect ICIP. The Arts Law Centre of Queensland (ALCQ) argued that attempts to use the Trade Marks and Designs laws to protect Indigenous cultural expression 'are unlikely to be a suitable means of protection'. The ALCQ argued that the Government should enact a new intellectual property law, separate but complementary to existing intellectual property laws, to provide for Indigenous cultural expression.²⁹

11.38 Ms Winikoff, Executive Director of NAVA, also stated that 'in the longer term, *sui generis* legislation is needed because the whole concept of collective intellectual property is one that is not dealt with well by existing copyright law'.³⁰

11.39 The Arts Law Centre of Australia argued that *sui generis* legislation would provide 'significant, tailored protection' for ICIP and should legally recognise the following:

- communal ownership;
- artistic styles;
- intangible forms;
- time limitations; and
- protection against Indigenous cultural materials being used without the appropriate consent of Indigenous custodians.³¹

11.40 Janke and Frankel also argued for the introduction of *sui generis* legislation. Similar to the Arts Law Centre proposal cited above, they proposed that the legislation provide protection for works that are intangible – there need not be a requirement of

29 ALCQ, *Submission 45*, p. 3.

30 Ms Tamara Winikoff, NAVA, *Committee Hansard*, 23 February 2007, p. 19.

31 Arts Law Centre of Australia, *Submission 36*, pp 14–15.

material form. Rights should also exist in perpetuity. Any rights granted should ensure that there are no time limits on protection.

11.41 Under the proposal the legislation would include provisions which prohibit the wilful destruction of cultural material; address misrepresentations of the source of cultural material; and provide for payment to Indigenous owners for the commercial use of their cultural material. Disputes would be mediated through an Indigenous Cultural Tribunal, comprised of Indigenous custodians, specialists in Indigenous law and community elders. The legislation would include offences such as fines for unauthorised use of cultural material and criminal sanctions for more serious offences.

11.42 The authors noted that the framers of the legislation would also need to consider how the proposed legislation would interact with existing copyright and intellectual property laws. They suggested that the legislation should apply only to cultural works outside the copyright period – where copyright does not exist. The authors emphasised the importance of extensive consultation with Indigenous people concerning the introduction of any proposed legislation.³²

COAG initiatives

11.43 Evidence pointed to the need for education and awareness strategies for Indigenous people and the wider community on ICIP rights issues.³³ As part of the COAG Framework on Reconciliation, in 2002 the Cultural Ministers Council (CMC) agreed to give priority to Indigenous Intellectual Property (IIP) issues. In 2003, CMC agreed that the key objectives for CMC in terms of IIP should be:

- 'promoting greater links between business and Indigenous communities about IIP to enhance greater economic independence;
- raising awareness in Indigenous communities, consumers and commercial operators of the need to protect IIP; and
- enhancing coordination of existing networks of Indigenous and non-Indigenous organisations working in the area of IIP'.³⁴

11.44 CMC allocated \$100 000 for an Indigenous Intellectual Property Toolkit (IIP Toolkit) project to further these aims. The WA Department of Culture and the Arts (DCA) is managing the development of the Toolkit. The project involves assessing existing information and resources in the Indigenous intellectual property area to ascertain the extent of the resources available; and developing and piloting an IIP Toolkit aimed at artists, consumers and dealers, which caters for regional differences. The project commenced in November 2005 and has an 18-month timeline.

32 *Our Culture*, pp xxxvi-xxxviii.

33 *Our Culture*, p. xlv; NAVA, *Submission 27*, p.10; Viscopy, *Submission 44A*, p. 19.

34 DCITA, *Submission 50*, pp 9–10.

11.45 DCA indicated that Stage One of the development of the Toolkit entailed consultation with over 600 individuals and organisations, including artists and arts organisations, private and public galleries, auction houses and consumer groups across Australia. Stage Two is currently under way and involves the development of a prototype model to be piloted with representatives of major identified target groups – artists, consumers and dealers – to gather feedback on the efficacy of the product.³⁵

11.46 The Department stated that:

The national Indigenous Intellectual Property Toolkit, specifically targeting Indigenous artists, commercial operators and consumers will provide significant benefits by increasing understanding and respect for Indigenous culture, improving relationships between the sectors and maximising ethical economic opportunities.³⁶

Indigenous communal moral rights

11.47 Submissions argued for the introduction of Indigenous communal moral rights legislation arguing that existing moral rights legislation does not provide adequate protection for Indigenous people.³⁷

11.48 Moral rights were introduced into the Copyright Act under the *Copyright Amendment (Moral Rights) Act 2000*. Moral rights include the right of an author to be identified as the author of a particular work; the right not to have authorship falsely attributed; and the right of integrity of authorship. This later right provides that an artist may bring an action if the work is subjected to derogatory treatment. Moral rights are individual rights only. Currently, an Indigenous clan group or community cannot generally assert moral rights collectively.³⁸

11.49 The Myer Report noted that the current moral rights legislation does not provide adequate protection for Indigenous art and crafts practitioners given the social, economic and community responsibilities of artists under Indigenous customary law.³⁹ The report recommended that as part of Commonwealth action in relation to Indigenous intellectual property issues generally, that the Commonwealth extend moral rights to Indigenous groups.⁴⁰

11.50 The Myer Report noted that the rights of Indigenous communities to assert moral rights are important due to the way in which cultural property is viewed in Indigenous communities:

35 DCA, *Submission 18*, p. 8.

36 DCA, *Submission 18*, p. 8.

37 Arts Law Centre of Australia, *Submission 36*, p. 11; NAVA, *Submission 27*, p. 9.

38 Background Paper, pp 466, 468.

39 Myer Report, p. 152.

40 Myer Report, p. 158.

The Indigenous 'world-view' gives priority to the interests of the community over the interest of individuals. Under customary law, ownership of cultural property, imagery and folklore is a collective, rather than individual phenomenon. The value accorded to cultural property is based upon both the aesthetic qualities of the work and the degree to which the work reflects the livelihood and culture of the community. The artist is a custodian of the cultural property, and any use, alteration or reproduction of the work will need to be approved by community elders.⁴¹

11.51 In December 2003 the Government drafted proposed amendments to the Copyright Act for Indigenous communal moral rights to extend these rights to Indigenous groups. The draft bill was intended to give effect to the Government's 2001 election policy commitment and to a commitment made to Senator Aden Ridgeway when the Moral Rights Bill was passed in December 2000.⁴² The Exposure Draft Copyright Amendment (Indigenous Communal Moral Rights) Bill 2003 was distributed to a number of organisations and individuals for comment.

11.52 The draft bill proposed that for Indigenous communal moral rights to be recognised they must be a copyright work or film. The bill proposed that a number of conditions would need to be met before ICMR will arise: the work must be made; the work must draw on the traditions, beliefs or customs of the community; the work must be covered by an agreement between the author and the community; the Indigenous community's connection with the work must be acknowledged; and written notice of consent would have to be obtained by the author (or their representative) from all people with an interest in the work. It was also proposed that communal moral rights would exist alongside individual moral rights. Indigenous communal moral rights would exist in a work for the duration of the copyright period.⁴³

11.53 The draft bill was criticised as being 'highly complicated and legalistic'.⁴⁴ The Arts Law Centre of Australia argued that the bill was 'seriously flawed' making it 'too difficult' for communities to secure the protection the legislation was intended to provide. The Centre noted, for example, that the bill did not protect works where copyright has expired or elements of ICIP in which copyright subsists.⁴⁵ Ms Winikoff, Executive Director of NAVA, stated that 'we have some reservations about its form [the bill] but not about the fact that one is needed'.⁴⁶

11.54 The Northern Territory Government also expressed reservations, arguing that:

41 Myer Report, p. 152.

42 Background Paper, p. 468; ICIP Paper, p. 13.

43 ICIP Paper, pp 14–18.

44 See, for example, Background Paper, p. 470.

45 Message Stick ATSI web site, *Indigenous Communal Moral Rights Bill Seriously Flawed: Arts Law*, <http://www.abc.net.au/message/news/stories/s1702624.htm>, Accessed 29 May 2007, See also ICIP Paper, pp 14–18.

46 Ms Tamara Winikoff, NAVA, *Committee Hansard*, 23 February 2007, p. 19.

...proposals relating to so-called Indigenous Community Moral Rights, as they are currently framed, will [not] provide the kinds of protection for Aboriginal visual arts that its proponents claim. On the contrary, there are arguments that such legislation has the potential to promote division amongst and between Aboriginal groups, for no real benefit to artists, especially individual practitioners.⁴⁷

The Attorney-General's department advised the committee that it is aware of concerns raised by some stakeholders and is working on options to 'simplify the drafting of the bill'.⁴⁸

11.55 There were criticisms of a perceived lack of consultation with Indigenous groups. The Arts Law Centre of Queensland commented on the 'very limited circulation of the draft bill for public comment'.⁴⁹ The Arts Law Centre of Australia indicated that the organisation along with a few other organisations and individuals were provided with a copy of the bill on a confidential basis and made submissions to Government on the proposed legislation.⁵⁰ One study noted that the confidentiality surrounding the bill restricted the free flow of discussion on the proposed legislation. As a result there was only limited consultation with Indigenous people, communities and artists – those very groups supposed to benefit from the legislation.⁵¹

11.56 The Attorney-General's Department advised the committee that the Government initiated a consultative process on the draft bill in December 2003 that extended into the first half of 2004. The consultation process was 'targeted' so that the Government could obtain the views of a range of groups, including Indigenous groups, artists' representatives, art galleries and museums as well as Commonwealth and state government agencies. The department indicated that the Government received 'extensive feedback' from these groups. In addition, the Attorney-General met with some stakeholders to discuss the draft bill.⁵²

11.57 The Attorney-General's Department advised that the Copyright Amendment (Indigenous Communal Moral Rights) Bill is listed for introduction in the 2007 winter sittings – 'however, introduction of the bill will depend on whether the Government decides that further consultation is required'. The department indicated that it has met with some stakeholders this year to discuss the draft bill.⁵³

47 NT Government, *Submission 57*, p. 22.

48 Attorney-General's Department, *Correspondence*, 24 May 2007.

49 Arts Law Centre of Queensland, *Submission 45*, p. 3.

50 Arts Law web site, *Indigenous Communal Moral Rights Legislation*, <http://www.artslaw.com.au/documents/files/ICMRLetterAndExecutiveSummary2006.pdf>; see also Arts Law Centre of Queensland, *Submission 45*, p. 3.

51 ICIP Paper, p. 19.

52 Attorney-General's Department, *Correspondence*, 24 May 2007.

53 Attorney-General's Department, *Correspondence*, 24 May 2007.

Recommendation 24

11.58 The committee recommends that as a matter of priority the government introduce revised legislation on Indigenous communal moral rights.

Conclusion

11.59 Evidence to the inquiry argued that existing intellectual property laws are inadequate in recognising and protecting Indigenous cultural and intellectual property rights. The committee believes that current legislation generally fails to take into account the very different notions of cultural and intellectual property that form the basis of Indigenous society and cultural identity.

11.60 The chapter has discussed specific inadequacies in the current copyright, designs and trademarks legislation. Various proposals have been suggested to address these deficiencies. The committee considers that the Commonwealth should introduce legislation to protect Indigenous cultural and intellectual property rights. It notes that protection for Indigenous cultural and intellectual property could be implemented either by amendments to existing legislation or the introduction of specific legislation. The committee believes that specific legislation would probably provide the most effective form of protection given the difficulties associated with amending a variety of current laws.

11.61 Earlier chapters noted that there has been limited success in using laws to ensure the integrity of the Indigenous art market. The drafting of new laws should be conducted with particular attention to the specific situation and disadvantages faced by Indigenous artists in seeking to assert their property and contractual rights.

Recommendation 25

11.62 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.

11.63 Evidence also argued that existing moral rights legislation does not provide protection for Indigenous communal moral rights. The committee believes that action to implement the extension of communal moral rights to Indigenous groups is desirable. At the same time it believes that the individual moral rights of all artists, including Indigenous artists, should be protected on equal terms. The committee is pleased to note that the Government intends to introduce the Copyright Amendment (Indigenous Communal Moral Rights) Bill in the 2007 winter sittings.

Chapter 12

Resale royalty

12.1 This chapter discusses the feasibility of the introduction of a resale royalty scheme in Australia.

12.2 A resale royalty, also called a *droit de suite*, entitles an artist or their heirs to royalties when a work of art is resold on the contemporary art market. In essence the resale royalty right is a form of copyright entitlement held by the original artist. Resale royalty-type arrangements are well established for films, video and audio-recording artists, and some broadcast performances, but are less well established in the visual arts sector.

Myer Report

12.3 In 2002 the Myer Report on contemporary visual arts and crafts in Australia recommended that the Commonwealth introduce a resale royalty arrangement in Australia and that it establish a working group, comprising representatives from government and the visual arts and craft sector, to analyse the options for introducing such an arrangement.¹ The inquiry assessed the potential benefits for visual artists, the particular issues for Indigenous artists, and the likely impact the measure would have upon the market for contemporary art and craft in Australia.²

12.4 Resale royalties may benefit artists in the following ways:

- providing artists with a contingent income stream which is currently not available;
- empowering artists by receiving a direct economic benefit from the success of their work; and
- recognising the ongoing relationship between the artist and their work, and the extent to which an artist's reputation is linked to the physical product of their creative labour.³

12.5 The Myer Report found that:

- If resale royalties were introduced, a substantial amount of benefit would accrue to artists. Estimates indicate that resale royalties calculated on 1999-2000 sales would amount to approximately \$6.75 million. This would be

1 R. Myer, *Report of the Contemporary Visual Arts and Craft Inquiry* (Myer Report), June 2002, p. 170.

2 Myer Report, pp 158–170.

3 Myer Report, p. 161.

supplemented by resale royalties payable under reciprocal arrangements with other countries.

- As demand in the art market is highly volatile, it is unlikely that resale royalties would have an impact on the art market over time.
- Resale royalty schemes vary greatly between countries. A number of models could be adopted. A suitable model for Australia would need to consider a number of factors, including which artworks would attract a resale royalty; the statutory form of resale royalties; the appropriate royalty rate; how remuneration under the scheme would be collected; and duration and succession issues.
- The inquiry, while not recommending a particular model, stated that the proceeds of resale royalties should be paid directly to the individual artists, rather than to a communal fund.⁴

12.6 The report found that the case for a resale royalties scheme was particularly strong for Indigenous artists. The benefits that would flow to Indigenous artists included:

- providing additional income to some artists;
- empowering and nurturing artists;
- recognising the ongoing relationship between the artist and the artist's community with the work and the owner;
- providing means for artists to meet community obligations;
- minimising exploitation; and
- reducing profiteering and promoting transparency in the sector.⁵

12.7 The report cited some concerns regarding perceived risks to the Indigenous art market, collectors and artists. These included:

- potential negative impact on the Indigenous market;
- possibility of sales in Indigenous art moving off-shore;
- possibility that a resale royalty would constitute a disincentive to collectors;
- risk of sales becoming more private to avoid payment of the royalty;
- possible impact of the measure on galleries and collectors;
- potential disadvantages to emerging artists; and
- possibility that only successful artists will benefit; and possible creation of an elite market.⁶

4 Myer Report, pp 162–170; 382–385.

5 Myer Report, p. 165.

12.8 Despite these concerns the inquiry found that the introduction of a resale royalty scheme would provide benefits to Indigenous artists.

Overseas resale royalty arrangements

12.9 Resale royalty schemes have been in place in several European Union (EU) countries, including France, Germany, Italy, Greece, Belgium and Denmark, for many years.⁷ While many EU countries had introduced resale royalty schemes by 2000, some including the United Kingdom, Ireland, Austria and the Netherlands had not. In 2001 the EU passed a Directive creating an obligation on member countries to adopt resale royalty legislation by 2006, with full implementation by 2012. The harmonisation is aimed at ensuring a uniform level of protection and a 'level playing field' in the European art market.

12.10 The United States does not have a national resale royalty scheme, but a scheme operates in California. Several Latin American and African countries also operate resale royalty schemes.

12.11 Overseas resale royalty schemes generally cover all original and tradeable works of contemporary visual art – including, but not necessarily limited to, original paintings, drawings and sculptures. The EU Directive specifies that royalties will be applicable to all professional secondary sales and operates for 70 years after the artist's death.⁸ Most overseas jurisdictions specify a minimum sale amount before the resale royalty will come into effect. In the EU Directive, a minimum sale amount of €3000 applies. Generally, resale royalties apply to public sales involving art professionals through auction houses and commercial galleries. Private sales are excluded.

12.12 In most jurisdictions, resale royalty rates are between two and five per cent. The EU Directive specifies a sliding scale for calculating the royalty, and the resale royalty applies only to the net price – that is, the sale price less the cost of sale. Some other jurisdictions calculate the percentage royalty only on the increase in resale in real terms. While this seems to be an equitable position to adopt on behalf of the vendor, it raises issues of how the increased value of a work of art is to be determined. Where there are unambiguous sale documents available this is relatively straightforward. It becomes more complex where works have been gifted or

6 Myer Report, p. 166.

7 Clare McAndrew and Lorna Dallas-Conte, *Implementing Droit de Suite (artists' resale right) in England*, The Arts Council of England, <http://www.artscouncil.org.uk/documents/publications/325.pdf>, accessed March 2007.

8 DCITA, *Proposed Resale Royalty Arrangement: Discussion Paper*, 2004, pp 7–8, http://www.dcita.gov.au/_data/assets/pdf_file/12024/Proposed_Resale_Royalty_Arrangement_Discussion_Paper.pdf, accessed March 2007. Hereafter 'DCITA Discussion Paper'.

bequeathed; where original documents are inconclusive or missing; and where works have undergone value-enhancing, such as conservation treatments.⁹

12.13 A UK study reported that if a resale royalty scheme had been in place in the UK in 1996 it would have applied to £242.8 million of auction house sales, resulting in payments to artists of £6.5 million. Art dealers would have incurred payments of £3.4 on the same basis.¹⁰ It has been estimated that approximately 250 000 artists will benefit from the introduction of the resale royalty in EU member countries.¹¹

12.14 The cost of administering schemes in Europe is generally in the range of 10-40 per cent of the royalty. In most schemes, administration expenses are subtracted from the royalty itself.¹²

12.15 DCITA stated that there are pressures within the EU to reduce both the rate and the duration of the resale right due to a range of factors, including concerns that the implementation of a resale royalty would lead to the movement of art sales to other jurisdictions where resale royalties do not apply.¹³ In the United Kingdom, some art dealers had strongly resisted the introduction of a resale royalty arguing that increasing the cost of works sold in galleries or at auction would cripple the local market and drive buyers offshore, particularly to New York.¹⁴

12.16 During the inquiry several witnesses argued that overseas schemes, especially in Europe, operate effectively:

It works in France. It has worked for many years. It is not just the top artists. You can go to any auction that comes up and there are so many now each year of Indigenous art and you have got every age range, every kind of region of the country, artists working in all the different media and their work is sometimes a couple of years old, if that, and the work is going out to auction houses. I do not buy into that. I think it is too hard for the bureaucrats to deal with, but it certainly is of benefit to individual artists.¹⁵

9 DCITA Discussion Paper, pp 7–8, 24–25.

10 Caslon Analytics web site, www.caslon.com.au, Accessed 29 May 2007.

11 R. Kirstein and D. Schmidtchen, *Do Artists Benefit from Resale Royalties?*, 2000, p. 3.

12 DCITA Discussion Paper, pp 22–23. See also Henry Lydiate, *Artists' Resale Right: First Year Report*, ArtLaw, 2007, <http://www.artquest.org.uk/artlaw/resaleroyaltyright/30971.htm>, accessed March 2007.

13 DCITA Discussion Paper, p. 8.

14 Caslon Analytics web site, www.caslon.com.au/droitprofile, Accessed 29 May 2007.

15 Ms Brenda Croft, Senior Curator, ATSI Art, NGA, *Committee Hansard*, 9 February 2007, p. 61. See also Ms Tamara Winikoff, Executive Director, NAVA, *Committee Hansard*, 23 February 2007, p. 23.

12.17 However, there are other views. Michael Reid has noted that the scheme's operation in France is being reviewed and scaled back.¹⁶ The French culture minister has indicated France now favours removing the application of resale royalty to the estates of deceased artists, and there remains concern that the scheme discourages art sales in Europe.¹⁷ These concerns about negative impacts on art sales led Christie's auction house in the UK to impose the resale royalty costs on the buyer rather than the seller of the work, after losing a fight against the introduction of the scheme.¹⁸

12.18 One evaluation of the UK system at the end of its first year dismissed concerns about the impact of resale royalty on prices:

The number and price levels of modern and contemporary art resales by art market professionals in the UK since February 14, 2006 appear to have been impressive, with record resale prices being reported both at public auction and in private treaty sales. The UK art market does not therefore appear to have been damaged by the introduction of ARR.¹⁹

DCITA discussion paper

12.19 As part of the Commonwealth's consideration of a resale royalty scheme, a discussion paper was prepared by DCITA in 2004.²⁰ DCITA called for submissions from interested parties and the Attorney-General's Department subsequently administered the project. The paper presented research intended to stimulate broad discussion on the desirability of some form of resale royalty arrangement in Australia.

12.20 The discussion paper considered a wide range of arrangements for a resale royalty scheme, centred on two key questions: what model would underpin a resale royalty scheme; and how would the design of the scheme affect outcomes for artists, including Indigenous artists.

Options for a resale royalty arrangement

12.21 The DCITA paper outlined three possible models for an Australian resale royalty scheme and presented information on the possible impact of a resale royalty on Australia's visual arts sector. The three options included:

- amending the *Copyright Act 1968* to fully legislate a resale royalty;

16 Michael Reid, '2007 Art Market Trends', *Michael Reid* [newsletter], Feb-Mar 2007, p. 6.

17 Georgina Adam, 'French Government's €100m plan to boost failing art scene', *The Art Newspaper*, 14 December 2006, <http://www.theartnewspaper.com/article01.asp?id=535>, accessed March 2007.

18 Georgina Adam, 'Christie's will charge new levy to buyer, not seller', *The Art Newspaper*, 2 March 2006, <http://www.theartnewspaper.com/article01.asp?id=194>, accessed March 2007.

19 Henry Lydiate, *Artists' Resale Right: First Year Report*, ArtLaw, 2007, <http://www.artquest.org.uk/artlaw/resaleroyaltyright/30971.htm>, accessed March 2007.

20 DCITA, *Proposed Resale Royalty Arrangement: Discussion Paper*, 2004.

- requiring industry to introduce a self-regulated resale royalty scheme, through amendments to the Copyright Act or other legislation specifying reporting requirements; or
- working with the sector to encourage contract-based resale royalty arrangements between artists and dealers.

A fully legislated scheme

12.22 A legislated scheme would impose a legal requirement to pay a percentage of the resale price of a work of art to the artist or their estate. A number of organisations such as NAVA, the Arts Law Centre of Australia and Viscopy favour this approach. This type of scheme would entitle Australian artists to similar benefits in other jurisdictions in which a comparable resale royalty right exists through the principle of reciprocity – whereby an artist may be entitled to resale rights in a foreign country where comparable rights also exist in their own country.²¹

12.23 DCITA noted, however, that there would be limitations to the application of reciprocity arrangements, and that there could be complexities associated with factors such as different types of art works being covered in different jurisdictions.

12.24 The discussion paper noted that there are also a number of issues that the Government would need to consider before introducing a legislated scheme:

- 'whether the scheme should be enacted through stand-alone legislation or amendments to the Copyright Act; and
- constitutional and tax issues – for instance, it may be necessary for the legislation establishing the scheme to make provision to provide 'just terms' for anyone whose existing property rights are adversely affected by the resale royalty scheme. There is also some risk that the scheme could be characterised as imposing a tax for constitutional purposes, although this issue would need to be further examined'.²²

Industry self-regulation

12.25 Resale royalty arrangements could also be achieved through the adoption of an industry code of practice by businesses involved in the art resale market. An industry working group, comprising key stakeholders, could be formed to develop a code of practice. The Government could monitor the operation of the scheme through the introduction of compulsory reporting requirements.

12.26 This option has the advantage of involving those organisations that would implement the resale royalty directly in the design of the scheme. This would limit

21 DCITA Discussion Paper, p. 37.

22 DCITA Discussion Paper, p. 37.

any negative effect that a resale royalty scheme would have on the sustainability of those businesses and the buoyancy of the Australian art market.²³

Contract-based resale royalties

12.27 Another option would be for Government to work with the sector to implement contract-based resale arrangements between artists and dealers. Some commercial galleries currently enter into voluntary arrangements with artists, in which the purchaser of an artwork pays a resale royalty whenever a work is resold.

12.28 The discussion paper noted that while this model could have the least impact on commercial gallery businesses, it nevertheless relies on the 'goodwill' of their owners. In addition, many artists would not possess the bargaining power to ensure a resale royalty-like clause was included in a contract of sale.²⁴ This could be to the disadvantage of Indigenous artists given their generally lower levels of education.

Outcomes for Artists

12.29 The discussion paper considered the actual outcomes for artists from a range of alternative models for a resale royalty scheme.²⁵ Ten models were tested, using actual auction sales (see table 12.1). The three key variables in the models tested were:

- the minimum threshold at which a resale royalty would take effect – an \$8000 sale price threshold; a \$5000 threshold; a \$1000 threshold; and no threshold;
- the rate of royalty – the different threshold levels were applied using a flat rate of 5 per cent; or with a sliding scale; and
- the duration of the royalty – the full term of copyright is applied – that is, the life of the artist plus 70 years; or life of the artist.

23 DCITA Discussion Paper, pp 37–38.

24 DCITA Discussion Paper, p. 38.

25 DCITA Discussion Paper, pp 28–35.

Table 12.1: Summary of outcomes under different resale royalty models ²⁶

Model	Threshold	Sliding/ flat rate	Duration	% of 2003 auction sales captured	Total value of work sold	Total royalties collected	Number of artists	% Indigenous artists	Average royalty	Max royalties to an artist	Min royalties to an artist	Estimated admin costs (18%)
1.	\$8,000	Sliding	Copyright	63%	\$57.56m	\$1.43m	255	26%	\$5,600	\$83,000	\$250	\$314,000
2.	\$5,000	Sliding	Copyright	66%	\$60.96m	\$1.54m	344	28%	\$4,489	\$85,000	\$165	\$339,000
3.	\$1,000	Sliding	Copyright	72%	\$65.89m	\$1.72m	823	26%	\$2,095	\$91,000	\$33	\$379,000
	\$0	Sliding	Copyright	73%	\$67.35m	\$1.75m	1391	17%	\$1,261	\$91,500	\$2	\$385,000
5.	\$8,000	Flat 5%	Copyright	63%	\$57.56m	\$2.36m	255	26%	\$9,250	\$120,000	\$330	\$518,000
6.	\$5,000	Flat 5%	Copyright	66%	\$60.96m	\$2.5m	344	28%	\$7,266	\$204,000	\$205	\$550,000
7.	\$1,000	Flat 5%	Copyright	72%	\$65.89m	\$2.72m	823	26%	\$3,300	\$207,000	\$40	\$600,000
8.	\$0	Flat 5%	Copyright	73%	\$67.35m	\$2.76m	1391	17%	\$1,985	\$207,000	\$2	\$606,000
9.	\$5,000	Portion- based sliding	Copyright	66%	\$60.96m	\$1.76m	344	28%	\$5,120	\$106,000	\$165	\$387,000
10.	\$5,000	Sliding	Life of artist	25%	\$22.69m	\$0.66m	173	29%	\$3,800	\$75,000	\$165	\$144,000

Indigenous artists

12.30 Introduction of a resale royalty scheme would not, for the majority of Indigenous artists, provide significant financial benefits. Under all models, non-Indigenous Australian artists dominate the royalty payments. Indigenous artists do not feature in the top royalty payment tier and the top-grossing Indigenous artists receive less than the top-grossing non-Indigenous Australian artists. Up to 29 per cent of artists benefiting from the scheme would be Indigenous, depending on the structure adopted. Benefits that would flow to Indigenous artists differ significantly under the models presented, with average royalty payments ranging from \$1000 (sliding scale, no threshold) to \$5000 (5 percent rate, \$8000 threshold).²⁷

12.31 The discussion paper noted that research suggests that, in terms of income supplementation, resale royalty schemes bring most benefit to successful, late-career artists with strong reputations, whose work is regularly traded:

Resale royalty schemes do not appear to provide significant supplementary income for emerging artists in the early stages of their careers, because they are generally selling works for the first time. Collectors will also generally hold on to works until (and if) their value appreciates with the rise of the artist's reputation. This finding is supported by modelling [above] using 2003 auction sales data.²⁸

12.32 Outcomes for Indigenous artists from a range of models are outlined in Appendix 5.

Administration costs

12.33 While the cost of administration is likely to vary as a percentage of the royalty collected, lower (or no) threshold models which generate higher levels of royalty also require greater administration costs, due to the increased number of payments to artists.

DCITA discussion paper – issues raised in submissions

12.34 Following the release of the discussion paper, DCITA called for submissions on the possible design of a resale royalty arrangement, including what form an Australian scheme should take and how it would operate. Thirty-four submissions were received.

12.35 Submissions on the discussion paper noted that there are unique features of the Australian art market which need to be considered in designing a workable resale royalty scheme. Some of these factors include:

- the Australian art market is small compared with larger overseas art markets;

27 DCITA Discussion Paper, p. 33.

28 DCITA Discussion Paper, p. 17.

- the prices of artworks in Australia are lower than prices in larger art markets;
- the Australian art market is very elastic and volatile and resale prices fluctuate considerably depending on temporary values in the marketplace; and
- online art sales are increasing.²⁹

12.36 Given the small size of the Australian art market, a relatively high minimum sale amount (threshold) before a resale royalty comes into effect may need to be considered in the design of such a scheme. Access Economics, in a commentary on DCITA's discussion paper, noted that the observed volatility of the Australian market may pose problems in implementing a resale royalty. From an economic efficiency perspective, 'imposing institutional changes (especially affecting price) on volatile markets is very likely to generate very large behavioural changes'.³⁰ The growth of Internet sales may also impose complications for copyright enforcement of such a scheme between different countries and may lead to shifts in transactions away from resale royalty regimes to non-resale royalty regimes. These factors suggest that an important element when creating a model for resale royalty is to examine the potential impact on all stakeholders.

12.37 Submissions also suggested that there are aspects of the Indigenous art market which may be unique to Australia, and which may need to be considered in connection with an Australian scheme, such as the greater likelihood that royalties will be shared amongst members of the artist's community.³¹ One submission noted that it may be useful to consider if the terminology 'resale royalties' might be misinterpreted by Indigenous artists and communities, in view of the association with large royalty payments linked to mining. It may be better to term the payments as 'resale rights' to avoid confusion and unrealistic expectations.³²

12.38 Submissions commented on the appropriateness or otherwise of a resale royalty arrangement in Australia. Submissions representing the visual arts sector and arts organisations generally supported the introduction of a resale royalty scheme. These submissions overwhelmingly supported the introduction of a fully legislated scheme. There were variations between models regarding royalty thresholds and ceilings and the administering authority. Some of the major proposals are summarised in Appendix 6.

12.39 In contrast, submissions from auction houses and galleries generally opposed the introduction of a resale royalty scheme in Australia or supported the adoption of an industry based model.

29 Australia Council, *Submission 9* to DCITA inquiry, Attachment A; Viscopy, *Submission 32* to DCITA inquiry, p. 6.

30 Access Economics, *Discussion Paper on Proposed Resale Royalty Arrangements*, July 2004, p. 8.

31 Australian Copyright Council, *Submission 10* to DCITA inquiry, p. 3.

32 Arts Law Centre of Australia, *Submission 4* to DCITA inquiry, p. 3.

12.40 Sotheby's Australia, in arguing against a resale royalty scheme, suggested that such an arrangement would not benefit the vast majority of Australian artists. Of around 9250 Australian artists, they estimated that only 15 per cent at most would have received any resale royalty in 2003. Sotheby's also argued that resale royalty would discourage Australian art collectors from buying contemporary art and resale royalty would discriminate against auction houses. Sotheby's supported increased Commonwealth funding for the arts and artists as an alternative approach.³³

12.41 Some galleries supported the establishment of a voluntary, self-regulated industry based model (the second option in the DCITA paper). The galleries argued that under a compulsory, legislated scheme the costs of the scheme would be borne largely by the primary market – that is, the artists and galleries. Benefits would flow to a few well-off artists and their heirs. Further, a compulsory, legislated model would be subject to costly litigation, disputes and high administrative costs. It would reduce the primary market for artists' works and consequently their incomes.³⁴

Access Economics report

12.42 A report by Access Economics for Viscopy Ltd evaluated the impact of an Australian resale royalty on eligible visual artists. The report modelled the impact of such a system if it was introduced in the Australian market as a copyright payment. The report did not specifically assess the impact on Indigenous artists.

12.43 The report argued that the impact of a resale royalty on the Australian art market is difficult to determine because of the paucity of empirical data about relevant behavioural responses to its introduction. While the size and distribution of resale royalty payments can be estimated, 'the critical question of who bears the actual economic cost of the royalty, and, more importantly whether eligible artists would be net beneficiaries of such an arrangement is not at all clear'.³⁵

12.44 Access Economics' modelling assumed that any resale royalty scheme would apply to all visual art as defined in the Copyright Act, and would be a fully legislated scheme. The modelling assumed the resale royalty applies at a flat rate (5 per cent) on the sale price in the secondary market. Various minimum thresholds were modelled, ranging from \$0 to \$5000. The report found that average royalties per artist ranged from \$3872 (5 per cent rate and no threshold) to \$11 128 (5 per cent rate and \$5000 threshold).³⁶

33 Sotheby's Australia, *Submission 30* to DCITA inquiry, pp 1–2.

34 Mr B. Gregory *et. al.*, *Submission 20* to DCITA inquiry, pp 12–13. The submission represented Annandale Galleries, Utopia Art Sydney and Sherman Galleries. See also Brenda May Gallery, *Submission 12* to DCITA inquiry, pp 12–13.

35 Access Economics, *Evaluating the Impact of an Australian Resale Royalty on Eligible Visual Artists* (hereafter *Evaluating the Impact*), October 2004, p. 1.

36 Access Economics, *Evaluating the Impact*, pp 17–34.

12.45 The report considered two market responses to determine the economic cost of the resale royalty:

- The situation where final purchasers of art are very price sensitive, greatly reducing their demand for art in response to any price increase. This is a scenario advanced by those arguing that a resale royalty is impractical and unlikely to be of net benefit to artists.
- The situation where final purchasers of art are very price-insensitive, not changing their demand for art in response to any price increase. This scenario is implicitly assumed in the DCITA discussion Paper.

12.46 The modelling results of these cases and intermediate scenarios were summarised as follows:

In the case of perfectly price-sensitive (elastic) final purchaser demand... in theory a large proportion of the RRR [resale royalty payment] is likely to be offset by reduced income in the primary market, particularly if artists are in a weak position compared to dealers. In this case, and allowing also for the costs of administering any RRR...it is unlikely that artists will benefit from introduction of a resale royalty scheme.

Alternatively, a RRR system is likely to produce a significant net benefit for artists in the case of perfectly inelastic final purchaser demand...In this case, even allowing for the cost of administering the RRR, artists would be likely to receive a net benefit from any resale royalty scheme.

For intermediate scenarios, where there is *some* price sensitivity of demand on the part of final purchasers, the situation is not clear. However, in such cases (other things being equal):

- the more price sensitive final demand is to art prices; and
- the higher the administrative cost of the RRR as a proportion of gross revenue collected
- the lower the gross RRR benefit to artists, and the higher the chances that the *net benefits* to artists will be small, zero, or even negative.³⁷

12.47 The report stated that determining the merits of a resale royalty scheme requires empirical evidence of the price-sensitivity of purchaser demand to changes in art prices:

It is quite possible that, for established artists in demand, purchasers are relatively price-insensitive. If so such artists might be net beneficiaries of an RRR [resale royalty right]. In such cases, this would suggest that artists, especially established artists, are able to exercise a degree of market power.

However, for artists not yet established – probably the vast majority – purchaser demand may be much more price-sensitive. If so, these artists may end up with little or no net benefit from an RRR.³⁸

37 Access Economics, *Evaluating the Impact*, p. 2.

Similar conclusions were drawn in the DCITA discussion paper on the likely impact of a resale royalty scheme.

Government rejection of resale royalty scheme

12.48 In 2006 the Commonwealth announced its rejection of the introduction of a resale royalty scheme, arguing that a resale royalty right 'would not provide a meaningful source of income for the majority of Australia's artists'.³⁹

12.49 The Government argued that research showed that resale royalty schemes afford most benefit to successful late career artists and the estates of deceased artists:

It would bring little advantage to the majority of Australian artists whose works rarely reaches the secondary art market and would also adversely affect commercial galleries, art dealers, auction houses and investors.⁴⁰

12.50 While it was noted that one of the main arguments put forward in support of resale royalty was that Indigenous artists are particularly disadvantaged by the secondary sales market, 'research shows, however, that a resale royalty scheme would not end disadvantage for Indigenous artists'. The Commonwealth announced \$6 million over four years in the 2006-07 Budget to support visual arts as an alternative to a resale royalty scheme, including through increased funding to the existing NACIS program. Such an approach, and its advantages, had been raised by the Government in the DCITA discussion paper.⁴¹

Evidence to this inquiry

12.51 Evidence to this inquiry – in those submissions and other evidence that commented on the issue – indicated general support for the introduction of a resale royalty scheme for Australian artists.

12.52 Submissions particularly emphasised the economic benefits that would flow to Indigenous artists from resale royalties. The Australia Council stated that:

The degree of economic and social disadvantage experienced by indigenous artists is very significant. The disparity between the high prices paid on the secondary market, and the low initial fees paid on the primary market is perpetuating this long-term disadvantage. A resale royalty scheme would do much to redress this.⁴²

38 Access Economics, *Evaluating the Impact*, pp 2–3.

39 Attorney-General, the Hon Philip Ruddock MP, and Minister for the Arts and Sport, Senator the Hon Rod Kemp, 'New Support for Australia's Visual Artists', *News Release*, 9 May 2006.

40 Attorney-General, the Hon Philip Ruddock MP, and Minister for the Arts and Sport, Senator the Hon Rod Kemp, 'New Support for Australia's Visual Artists', *News Release*, 9 May 2006.

41 DCITA Discussion paper, p. 39.

42 The Australia Council, *Submission 38*, p. 3.

12.53 Similarly, the WA Department of Culture and the Arts noted that a resale royalty scheme would be especially advantageous to Indigenous artists – 'with works being sold in the secondary market at a much higher value than initially bought for, Indigenous artists stand to benefit greatly from any arrangement put in place'.⁴³

12.54 NAVA noted that a legislated resale royalty scheme can be a viable industry mechanism to provide much needed economic returns to artists – 'further, the strong evidence presented in the past has shown that Indigenous artists in particular could benefit from such legislation'.⁴⁴ The Arts Law Centre of Australia pointed to the Myer Report which argued that a resale royalty scheme would provide significant economic returns for artists and their families, especially Indigenous artists.⁴⁵ Caruana Fine Art argued that there was also a 'moral imperative' in implementing a resale royalty scheme given the rapid escalation in the value of many Indigenous artists' work.⁴⁶

12.55 A study by Janke and Quiggin for the Australia Council noted that generally Indigenous artists, even those at the high end of the market, are not financially well off and often have financial commitments to extended families. The study argued that the case for a resale royalty scheme is even stronger for Indigenous people as the arts industry provides a source of income to people who, in many cases have severely limited capacity to engage in the general labour market.⁴⁷

12.56 A voluntary resale royalty scheme was generally not supported. NAVA pointed to the example of the Indigenous Art Trade Association which 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.

12.57 NAVA argued against this model for several reasons suggesting that it is patronising and that 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). NAVA also noted that most auction houses and commercial galleries who work in the resale sector are not taking up this responsibility.⁴⁸

43 WA Department of Culture and the Arts, *Submission 18*, p. 6.

44 NAVA, *Submission 27*, p. 5. See also Ms Tamara Winikoff, Executive Director, NAVA, *Committee Hansard*, 23 February 2007, p. 19.

45 Arts Law Centre of Australia, *Submission 36*, p. 13. See also Queensland Government, *Submission 58*, p. 20; WA Department of Culture and the Arts, *Submission 18*, p. 6.

46 Caruana Fine Art, *Submission 31*, p. 4. See also Mr Wallace Caruana, *Committee Hansard*, 9 February 2007, p. 27.

47 T. Janke and R. Quiggin, 'Indigenous Cultural and Intellectual Property', May 2006, pp 24–25, Attachment to Australia Council, *Submission 38*.

48 NAVA, *Submission 27*, p. 5.

12.58 Similarly, the option of establishing a trust fund for Indigenous artists was generally not supported. Viscopy Ltd described this approach as 'patronising and paternalistic'.

Resale royalties belong to the artists, according to international standards, and those specific artists whose works have earned them, should have direct control over how their monies are used. It is irrelevant whether a particular stakeholder approves of how Indigenous artists spend their money.⁴⁹

12.59 Similar arguments were advanced by Janke and Quiggin who argued that these schemes treat artists as incapable of determining their own financial futures.⁵⁰ Some witnesses, however, while not arguing for a trust fund *per se*, argued that the dispersal of resale royalties to communities could be one means of addressing socio-economic disadvantage in Indigenous communities.⁵¹

12.60 Submissions also argued that the lack of a resale royalty scheme leaves many Indigenous communities and individual artists with the impression that many engaged in the Indigenous art market are self-serving and largely interested in their own financial gain, at the expense of Indigenous art and culture.⁵²

12.61 Some evidence, however, raised issues with resale royalty arrangements. A submission from Mr Walker, a professional practising artist, argued that a resale royalty scheme has the potential to harm the primary market for Australian art by depressing first sale prices by having a negative effect on buyers. The submission noted that for artists deriving income from the sale of their works, the key question in evaluating the impact of such a scheme is the potential impact on the buyers of these works. Mr Walker also argued that the potential impact would not differ significantly between Indigenous and non-Indigenous artists.⁵³

12.62 The submission argued that the main concern of artists is with primary sales and that a resale royalty scheme is likely to adversely affect these sales and not, in the longer term, provide sufficient compensation for these 'lost' sales. Mr Walker argued that 'the proposed scheme's economic impacts upon *all* Australian artists is likely to be negative'.⁵⁴

49 Viscopy Ltd, *Submission 44A*, p. 13. See also Ms Hetti Perkins, Senior Curator, ATSI Art, NGA, *Committee Hansard*, 9 February 2007, p. 61.

50 Janke and Quiggin, p. 26.

51 Mr Paul Johnstone, Director, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 39; Ms Cathy Cummins, Manager, Waringarri Aboriginal Arts, *Committee Hansard*, 19 February 2007, p. 25.

52 Viscopy Ltd, *Submission 44A*, p. 13.

53 Mr John Walker, *Submission 80*, p. 2

54 Mr John Walker, *Submission 80*, p. 1.

12.63 Mr Walker noted that artists typically retain 60 per cent of the sale price of an artwork. For each \$10 of a new sale, the artist earns \$6 in income. Under a resale royalty scheme if a work was resold the artist would collect 3-5 per cent of the resale price (less the commission charged by a collection agency of approximately 20 per cent) as a royalty.

This disparity – 60% earnings on a new sale and 3-5% earnings on a resale – is important in understanding the potential of [Artists Resale Royalties] ARR to actually *cost* living artists' income....if only a molehill of buyers of new works were to get 'cold feet' now about the impact of a resale royalty on the resale price of their 'investment', the artist will need in the future a mountain of resales to recoup that initial loss.⁵⁵

12.64 Mr Walker also noted that resale royalties are likely to benefit a few, more successful artists, many of whom are no longer alive – 'it therefore seems to me that its potential to harm the majority of artists, who are living, should be given far more weight than its potential to benefit a very, very few estates of very successful artists, in any sane assessment of the merits of the scheme'.⁵⁶

12.65 One witness also noted that:

The jury is still out on resale royalties at the moment. I am not quite sure where I sit on that...because I see it from two different levels. But I think the issue of maintaining some sort of market standard, through auction houses in particular, needs to be addressed as well.⁵⁷

12.66 Another witness did not see a problem if an artwork sold at a particular point in time increased in value over time if the buyer paid the market price at the time of sale.⁵⁸ Another witness expressed concern about the high administrative costs associated with some resale royalty schemes overseas.⁵⁹

Conclusion

12.67 The committee notes that resale royalty schemes have been introduced in many European and other countries and provide a number of benefits to artists. The Myer Report recommended the introduction of a resale royalty arrangement in Australia and some form of resale royalty is supported by many stakeholders in the visual arts sector. There is also widespread support for such an arrangement amongst groups representing Indigenous interests in the sector.

55 Mr John Walker, *Submission 80*, p. 2.

56 Mr John Walker, *Submission 80*, p. 3.

57 Mr Paul Johnstone, Director, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 39.

58 Mr Anthony Oliver, CEO, Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 45.

59 Mr Kevin Kelly, Manager, Red Rock Art, *Committee Hansard*, 19 February 2007, p. 37.

12.68 While the schemes appear to enjoy support amongst many stakeholders, outcomes for artists can be problematic. Modelling conducted by DCITA on the economic benefits of such schemes found that they provide little advantage for the majority of artists whose work rarely reaches the secondary art market. Such schemes bring most benefit to successful late career artists and the estates of deceased artists. The Access Economics report came to similar conclusions, arguing that while a resale royalty scheme may provide economic benefits for established artists in demand, for the vast majority of artists there would be little or no benefit. However, they also noted that the benefits of the scheme are highly sensitive to the behaviour of participants in the market, and that this would require further research.

12.69 The committee considers that the impact on Indigenous artists is telling. It notes that despite the anecdotal evidence presented during the inquiry of the perceived financial benefits, resale royalties appear unlikely to provide significant benefits to Indigenous artists. On the contrary, the DCITA study indicated that most Indigenous artists would not generally benefit financially from the introduction of a resale royalty scheme. DCITA modelling indicated that non-Indigenous Australian artists dominate the royalty payments under all models. Across the models, Indigenous artists did not feature in the top royalty payment tier and the top-grossing Indigenous artists received significantly less than the top-grossing non-Indigenous Australian artists.

12.70 The committee is sympathetic to policy changes that will improve the circumstances of all artists, including Indigenous ones. However, it did not want to endorse changes that might have administrative costs but few benefits. The majority of the committee reluctantly concluded there was no clear benefit to pursuing a resale royalty scheme at this stage.

Recommendation 26

12.71 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.

12.72 Non-government members of the committee recognise that a resale royalty scheme must be carefully designed. While noting the modelling of DCITA, they believe that options exist for a scheme that merit introduction. They note the observation of researcher Katrina Gunn who pointed out that Australia is well positioned to learn from schemes in many other countries in order to develop a scheme that best suits Australia's circumstances. They also note her remarks about Australia risking becoming out of step with international practice in this field:

Given the international moves towards implementing resale royalty rights, the absence of such a scheme in Australia runs the risk of disadvantaging Australian artists. Typically, and as is consistent with the Berne Convention, the sale of an Australian work will attract a resale royalty in a

country only if a reciprocal right exists in Australia for artists of that country.⁶⁰

12.73 Accordingly, non-government members of the committee take the view that there should be introduced a resale royalty scheme that is designed to ensure appropriate resale rights accrue to artists, particularly Indigenous artists.

60 Katrina Gunn, 'Resale royalty rights: possible models for Australia', *Research Note* no. 21 2005–06, Parliamentary Library, Canberra.

Chapter 13

The permit system and Indigenous art

13.1 This chapter briefly explains the permit system that applies to some Aboriginal land, the legislative framework that underpins it, and examines how its operation can impact on Indigenous art and artists. The Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough MP, has issued a Discussion Paper calling for a review of the permit system, and possibly its abolition.¹ A brief review of the paper, its rationale for reform, and some initial public response is included.

Background and legislative framework

13.2 Several submissions raised issues about the permit regime governing access to Aboriginal artists on recognised Aboriginal land, particularly in the context of the debate on so-called 'carpetbaggers' and their activities. It has been argued by some witnesses that a strengthening of permit conditions and enforcement may be a solution to carpetbaggers taking advantage of poorly educated artists in isolated communities.

The permit system is really important for us. I think we should keep permits because when people come then there is guidance for those people. They should come with a permit. The permit system stops people coming in from all over the place.²

13.3 There appeared to be general support for the permit system within Aboriginal communities, as they see it as a mechanism to manage their land. For example, the Yirrkala Dhanbul Community Association described the benefits it believes it receives from the system:

The permit system helps to make Aboriginal land accessible to tourists, visitors and workers. It also protects the privacy of Aboriginal people, takes care of the environment and promotes safety. There are many areas, which are considered sacred or significant, and the system helps visitors to avoid causing offence or disrupting cultural activities.³

1 Department of Families, Community Services And Indigenous Affairs, Discussion Paper, 'Access to Aboriginal Land under the Northern Territory Aboriginal Land Rights Act – Time for Change?', October 2006 (Hereafter 'Permit Discussion Paper'), http://www.oipc.gov.au/permit_system/docs/permits_Discussion_Paper.pdf, accessed on 8 March 2007.

2 Mr Djambawa Marawilli, Chairperson/Executive Committee Member, Association of Northern Kimberly and Arnhem Aboriginal Artists, *Committee Hansard*, 20 February 2007, p. 19. See also Ms Apolline Kohen, Arts Director, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 44. See also Maningrida Arts and Culture, *Submission 51*, p. 4.

3 Yirrkala Dhanbul Community Association Incorporated website, http://www.yirrkaladhanbul.nt.gov.au/home/about_us/permit_system, accessed 12 March 2007.

13.4 Currently, permits are required for entry to almost half of the Northern Territory and some Aboriginal lands in South Australia, Western Australia and Queensland. The legislation covering Aboriginal land and its access comes under state jurisdiction, however as the Government of the Northern Territory is accountable to the Commonwealth Government, its legislation is derivative from Commonwealth legislation.

Northern Territory

13.5 Permit laws empower Indigenous communities to control their land and who has access to it. This is achieved through a system whereby people wanting to enter Aboriginal land need permission to do so (with some important exceptions, including members of parliaments and government employees authorised by the relevant minister). Land Councils can also decide to make areas or roads open, thus not requiring a permit.⁴

13.6 The *Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) enables the permit system on Aboriginal land in the Northern Territory. The following summarises the key aspects of the relevant legislation in the Northern Territory.

Aboriginal Land Rights (Northern Territory) Act 1976

- Section 70 makes it an offence for a person to enter or remain on Aboriginal land except (among other things) in accordance with the ALRA or with a law of the Northern Territory (penalty: \$1000).
- Section 73 gives the Northern Territory Legislative Assembly power to make laws regulating or authorising entry onto Aboriginal land, but any such laws must provide for the right of Aboriginals to enter such land in accordance with Aboriginal tradition. Such laws have effect to the extent that they are capable of operating concurrently with Commonwealth laws.

Aboriginal Land Act (NT) 1992

- Authorised by section 73 of the ALRA.
- Section 4 makes it an offence for people to enter or remain on Aboriginal land (and certain roads) without a permit (penalty: \$1000).
- Section 8 says the legislation does not authorise the entry of a person to a dwelling without the permission of the owner or the occupant. 'Dwelling' includes the living area of a camp occupied by or belonging to an Aboriginal person.

4 *Aboriginal Land Act (NT) 1992*, section 11.

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- Section 11 empowers the Administrator on the recommendation of a Land Council to declare an area of Aboriginal land, or a road, to be an 'open area' or an 'open road' which can be entered without a permit.
 - permits can be issued by:
 - the traditional owners of the area concerned
 - the relevant Land Council
 - the Administrator of the Northern Territory – where a person has applied for a permit to use a road and has been refused or the permit has not been issued in a reasonable time
 - the relevant Northern Territory Minister – in respect of certain Commonwealth or Northern Territory Government employees
 - the Land Council and the traditional owners can revoke their own or each other's permits and delegate their authority to issue permits. With some exceptions permits are issued without charge.

Aboriginal Land Rights (Northern Territory) Amendment Act 2006

- New subsection 19(13) provides for a Land Trust to authorise persons to enter or remain on land for a purpose related to an estate or interest granted by the Land Trust under section 19. There is a related new defence for entering Aboriginal land in accordance with such an authorisation in new subsection 70(2B).
- New subsection 70(2C) inserts a broad defence in relation to a leased township under section 19A. It provides that it is a defence if a person enters or remains on a part of a leased township for any purpose related to the use or enjoyment of an estate or interest, including subleases, in the leased township by the owner of the estate or interest. This significantly relaxes the permit system in leased townships. People who have a valid reason to enter a leased township, including for example customers of businesses or visitors of residents, will not need a permit.
- Commencement of these new provisions was on 1 October 2006.

Trespass Act (NT) 2004

- Section 5 creates an offence for trespass on premises.
- Section 4 defines 'premises' as a building or structure, whether permanent or temporary and whether fixed or capable of being moved, a dwelling place, any part of a yard, garden or area (whether enclosed or not) or a vehicle.⁵

The states

13.7 The permit systems of the other states, such as Western Australia, Queensland and South Australia vary both between and within the states. In Western Australia, the permit system is governed by the *Aboriginal Affairs Planning Authority Act 1972* (AAPA), in conjunction with the *Aboriginal Communities Act 1979* (ACA).⁶ Section 7(1)(b) of the ACA allows a council of a community to make by-laws relating to community lands with respects to 'the prohibition or regulation of the admission of persons, vehicles and animals to community lands or a part of he community lands.'⁷

13.8 The process and procedures of state legislation do not appear to have fundamental differences to the Northern Territory legislation apart from its ultimate authority. Common features include request for access to the community, a fee which is paid to that community, and variation on the type of fee given the length of stay and intended purpose. As the states' legislation is not derivative of Commonwealth law, they have the provision to preserve their permit systems unless an agreement is reached with the Commonwealth through negotiation.

Debate about the permit system

13.9 Notwithstanding the control that the permit system gives to Indigenous communities, there has been criticism of the system over the past few years. Reform was recommended in 1998 by the so-called 'Reeves Report' conducted by Barrister John Reeves, which reviewed the ALRA. In summary Reeves found the following:

- In many respects the permit system is a carry over from the native welfare system that applied to Aboriginal reserves in the Northern Territory prior to the introduction of the Act. Under that system, Aboriginal people were not allowed to travel off those reserves without permission and other Australians were not allowed to enter those reserves without permission. Whilst the former aspect has not been retained in the permit system, the latter has.
- It is patently clear that the permit system is in need of reform.
- If the permit system were removed and Aboriginal people were provided with similar rights in relation to their land to those held by other Territorians, Aboriginal people would not be disadvantaged in the process. Indeed, in my [Reeves'] view, they would be considerably advantaged by being unburdened of a system they do not support and from the improvement in race relations that would

6 See also Ngaanyatjarra Council Submission, December 2006, pp 8–10. The Ngaanyatjarra submission provides detail of both the legislative framework and practical procedures by which their permit system operates.

7 *Aboriginal Communities Act 1979*.

probably follow as a result of the removal of a racially discriminatory measure.⁸

13.10 Reeves recommended that:

- Section 70 of ALRA should be repealed;
- that Part II of the Aboriginal Land Act (NT) should be repealed; and
- amendments should be made to the Trespass Act (NT) (as set out in this paper above) to make it applicable to Aboriginal land and to allow Aboriginal landowners to make better use of it.⁹

13.11 In 2002, in response to a journalist's refused request to have access to Port Keats to report on the funeral of a young man shot by police, a Northern Territory Magistrate, David Loadman, challenged the right of Aboriginal communities to ban outsiders from entering their lands arguing the public right to know.¹⁰

Minister Brough's discussion paper

13.12 In October 2006 the Department of Families, Community Services and Indigenous Affairs (FASCIA) released a discussion paper¹¹ which examined the permit system on Aboriginal land in the Northern Territory and the relevant enabling Act, the Commonwealth's Aboriginal Land Rights (Northern Territory) Act. The Commonwealth does not legislate for jurisdictions other than the Territory in relation to access to Indigenous communities, and the states are responsible for their own legislation in this regard.

13.13 The Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough MP, announced on 12 September 2006, the Commonwealth's reconsideration of the Northern Territory legislation. The Minister's view was that the increased external scrutiny on remote Indigenous communities would, on balance, better support the interests of victims of crime, and better protect the disadvantaged and vulnerable, in what are otherwise relatively closed communities. The FASCIA discussion paper was prepared in light of this announcement.

8 *Building on Land Rights for the Next Generation*. Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976, August 1998. <http://www.austlii.edu.au/au/journals/AILR/1999/6.html#Heading36>, accessed 12 March 2007, In particular see chapter 14 on 'permits and access'.

9 *Building on Land Rights for the Next Generation*. Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976, August 1998.

10 ABC News Online, <http://www.abc.net.au/worldtoday/stories/s731220.htm>, accessed 12 March 2007.

11 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006.

13.14 FASCIA argued in its review that, while the permit system was originally designed to protect Aboriginal people from negative aspects of modern society, it might have also contributed to restricting Aboriginal peoples' access to the advantages of modern society and from mainstream social and economic benefits. The department also pointed out that the current permit system might impede on checks and balances of criminal and unhealthy behaviour by restricting access to remote communities, and that it may also have reduced the level of engagement between Aboriginal people and the mainstream economy, thus preventing Aboriginal people from benefiting fully from their land rights. It was also argued that the current permit system has not prevented instances of drug trafficking, violence or abuse from occurring in many remote communities.¹²

13.15 A new access system could provide a number of benefits, including the ability of Aboriginal people to engage in the mainstream economy unhindered, ensure open access to public space while protecting the privacy of private land areas and residences, improve external scrutiny to protect vulnerable community members, and be simpler for governments to administer.¹³

13.16 FASCIA outlined a number of options for the implementation of a new access system for Aboriginal lands. In summary, these are:

- (a) amend the existing legislative framework for the permit system, noting the new provisions for authorising access associated with estates or interests granted under section 19 of the Act;
- (b) provide open access to communal or public space and maintain the current permit-based system of restricted areas to non-public spaces;
- (c) widen the current permit-based system by expanding the categories of people eligible to enter Aboriginal land without being subject to permission;
- (d) reverse the current restrictive permission-based access system to a liberal system with specific area exclusions;
- (e) remove the permit system altogether and replace with the laws of trespass, with any necessary modification for Aboriginal land.¹⁴

12 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006, p. 4.

13 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006, pp 5–6.

14 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006, pp 6–7.

13.17 While the submissions received in response to Minister Brough's discussion paper have not been published, there has been some public response by interested parties.

13.18 Preliminary debate about what became of Minister Brough's proposal elicited response prior to the publication of the Discussion Paper. On 1 June 2006 the Central Land Council (CLC) issued a press release that argued:

Calls for the permit system to be abolished on Aboriginal land are motivated purely by self interest the Central Land Council said today. "It's amazing that 30 years on people still see Aboriginal freehold land as some public space which they can exploit for commercial and recreational purposes without regard for the traditional land owners," CLC Director David Ross said. "Claims the permit system slows down economic development for remote Indigenous people are a bizarre twist of logic"¹⁵

13.19 The Ngaanyatjarra Council provided this committee with their submission on the Minister's paper. The Council concluded that if the permit system were abolished then:

[this will] inevitabl[y] open up Aboriginal communities to exploitation and eventual takeover by business interests and powerful individuals from outside the local area.¹⁶

The permit system and Indigenous art

13.20 Evidence presented at the Alice Springs' hearing for the inquiry claimed that police find the permit system of assistance in locating 'people of interest' on Indigenous land.¹⁷ Mr John Oster of Desart said:

One of the things that police get involved in from time to time is permit regulation. They from time to time ask people to show their permits. They have said to us that occasionally there are people of interest on lands. The police are interested in the permit system. We support the retention of the permit system. We think that it is very important. At a meeting on 12 October our executive discussed this and unanimously these Aboriginal people called for the retention of the permit system.¹⁸

13.21 Mr Marawilli stated that ANKAAA favoured the permit system:

The permit system is really important for us. I think we should keep permits because when people come then there is guidance for those people. They

15 Press Release, Central Land Council, 1 June 2006, <http://www.clc.org.au/media/releases/2006/permits.asp>, accessed 12 March 2007.

16 Ngaanyatjarra Council submission on the Brough Discussion Paper, December 2006, p. 12.

17 Mr John Oster, Executive Officer, Desart, *Committee Hansard*, 21 February 2007, p. 28.

18 Mr John Oster, Executive Officer, Desart, *Committee Hansard*, 21 February 2007, p. 28.

should come with a permit. The permit system stops people coming in from all over the place.¹⁹

13.22 The Northern Territory government expressed a similar view:

I know that the Northern Territory government's submission to the minister for Indigenous affairs, Mal Brough, argued against any lifting of the permit system from Aboriginal communities. In the context of arts and crafts centres or arts centres, and we have done a paper on this called 'Cultural monopolies', there is a big threat of opening up particularly our major communities.... If the threat of lifting the permit system and having other investors or developers going in and being in competition with those well-established arts centres were to happen, that would create a number of crises.... With the permit system and the need for it to be removed, that is misguided and needs more thinking through. The Aboriginal land rights act is the enabling act, but the permit system is actually under the Aboriginal Land Act of the Northern Territory. We as a government have given a commitment too that we would not agree to any process of lifting the permit system.²⁰

13.23 At the same time, lack of enforcement means in some cases individuals without permits may be accessing Aboriginal land and taking advantage of artists. Although Ms Annette Cock of the Warlayirti Artists Aboriginal Corporation supports the permit system, she gave an example demonstrating its limitations:

We had a notorious carpetbagger from Perth show up and walk into the arts centre with a canvas that he had provided on of our artists with. He was putting pressure on our artists...I rung the police and said: 'This is the situation. This person is here. They haven't got a permit. He is actually encroaching on our artist.' The police could not attend to that at the moment...so I had to personally make sure that that person was escorted out of the community.²¹

13.24 There can be some confusion as to who has been issued a permit and who has not, particularly where several different organisations or individuals can issue permits, or where direct personal relationships with key members of the local Indigenous community have a bearing on the ability to access permits. The following exchange between the committee and witness Mr John Ioannou, at the Sydney inquiry hearing on 23 February, stands as an example.

Mr Ioannou—Yes. The head office knows as well. They wrote to [journalist] Nicholas [Rothwell] after that article and said, 'Look, you said

19 Mr Djambawa Marawilli, Chairperson, Executive Committee Member, Association of Northern, Kimberley and Arnhem Aboriginal Artists, *Committee Hansard*, 20 February 2007, p.19.

20 Ms Marion Scrymgour, Minister for Arts and Museums, NT Government, *Committee Hansard*, 20 February 2007, pp 7–8.

21 Ms Annette Cock, Warlayirti Artists Aboriginal Corporation, *Committee Hansard*, 19 February 2007, p. 55.

that he had a permit to go into our lands and pay charges or whatever and the reality is that he doesn't have a permit and that he shouldn't even be there.' So Nicholas rang me up and told me, and I said: 'Look, I'm sitting next to the chairman. If you want to talk to him, he can explain to you whether I have a permit or not.' So he said no and he left it at that. Then the chairman wrote another letter to the head office and they did not reply to him...

Senator MOORE—When did the permit discussion happen? I do apologise, but we have nothing here except the article from the newspaper.

Mr Ioannou—It was probably in November.

Senator MOORE—And, as of today, which is the end of February, you still do not have a formal permit to enter the lands?

Mr Ioannou—From the head office, no, but I do from the local community.

Senator MOORE—Are you going to do anything about that?

Mr Ioannou—I spoke to the chairman of the council, and they said: 'Just leave it; it's fine. It has all been taken care of.' So my understanding is that it has been taken care of.

Senator WEBBER—Where do you regard as home? Where do you live? I live in Perth.

Mr Ioannou—That is a hard question. I probably live most of my time in Irrunytju.

Senator WEBBER—Does everyone else who accesses that community need a permit?

Mr Ioannou—Yes.

Senator WEBBER—So, if other art dealers want to come in, they would need a permit?

Mr Ioannou—Definitely. It is a closed community. The only reason I was asked to do what I did was because of my closeness to Tommy Watson and a few of the other people who lived in that community.²²

13.25 Evidence presented at the inquiry indicates support for the retention of the current permit system.²³ Nonetheless, concerns remain and it is not assured that the current arrangements protect Indigenous artists, or cannot be subverted. The example given by Ms Cock demonstrates that the permit system requires enforcement, and if the police or other agents are unavailable, the unscrupulous can still take advantage of artists.

22 Mr John Ioannou, *Committee Hansard*, 23 February 2007, pp 116–17.

23 Ms Belinda Scott, *Submission 1*, p. 3; Professor Jon Altman, *Submission 11*, p. 8; Australia Council, *Submission 38*, p. 3; ANKAAA, *Submission 63*, p. 6.

13.26 As Mr Ioannou confirmed, all art dealers wanting to enter a community on Aboriginal land would need permits. In small communities, where one visiting (or residing) dealer has a close relationship with a community chairperson or governing body, that relationship could be used to seek to restrict access by potential competitors. Mr Ullin, who was generally supportive of the permit system, spoke about an experience of this nature, where someone had refused him access, despite conversations with artists which had suggested they wanted him to visit. He observed:

That is the downside sometimes of the permit system if you have someone who is quite discriminatory about whether you should come in or should not come in. But basically I think it does give them some control. I think they have a right to their land and they also have a right to say, 'We don't want a million visitors coming in here all the time.' But again, it needs a judgement from the community itself as to whether or not they want you to come in. I do not have a problem with it.²⁴

Conclusion

13.27 The committee recognises and deeply respects the importance of traditional land to Indigenous communities, and notes the review of the permit system currently underway. In the context of this inquiry, the key issue remains whether the current permit system helps or hinders unscrupulous operators from accessing and taking advantage of Aboriginal artists on their traditional lands. The majority of the committee considers that the evidence appears to be inconclusive as to whether the permit system actually prohibits carpetbaggers from exploiting artists. The committee received only one specific example in submissions and during testimony of the permit system being successfully used for this purpose, and similarly heard of one instance where the permit system may have been abused to protect unscrupulous operators through their relationships with people within the community.

13.28 Non-government senators on the committee believe that the evidence presented to the inquiry was overwhelmingly in favour of retaining the permit system. Several witnesses wrote and spoke in favour of the permits, and none spoke against it. No dealers or collectors argued for the relaxation of the permit system.

24 Mr Claude Ullin, *Committee Hansard*, 11 April 2007, p. 49.

Chapter 14

The future of the market for Indigenous art

Introduction

14.1 The future of the market for Indigenous arts and craft in Australia and overseas is dependent upon many factors, including the continued supply of the art itself, the cultivation of new generations of artists, tourism, the export market, and the level of financial and professional support available for artists to engage in the market. This chapter discusses two of the major sectors of the market, tourism and the export market for Indigenous art.

14.2 Government plays a valuable role in assisting the identification of markets, and in helping ensure that those marketing Indigenous art are able to take advantage of emerging sales and export opportunities. The Commonwealth agency Austrade has provided assistance in developing export sales. Business development and market identification for Indigenous art sellers are activities covered by current arts funding programs. There are also state and territory strategies supporting export markets:

Export opportunities were also supported through direct intervention and funding through the Indigenous Arts Strategy underpinned by the Indigenous Art Strategy and the Northern Territory Government International Trade Strategy.¹

14.3 In terms of the future of the market generally, flexibility in the marketplace is essential to the future success of Indigenous art centres. As Warlukurlangu Artists pointed out to the committee:

We are always looking for new markets. We have some people overseas. We have a regular exhibition program. We have places like Walkatjara that sell to tourists and then we have exhibitions at Alcaston Gallery and Gallery Gondwana where we put more collectible work and we might get exhibitions. So we have more than one way of marketing our work.²

The tourist market

14.4 The tourist market comprises sales of Indigenous art to travellers both Australian and from overseas. There are two distinctions between this and the export market. First, tourism sales take place in Australia, whereas export sales generally (though there are exceptions) are in overseas markets. Second, tourism sales often involve the purchase of art work as a memento or symbol of a tourist experience.

1 Northern Territory Government, *Submission 57*, p. 29.

2 Mrs Cecelia Alfonso, Warlukurlangu Artists, *Committee Hansard*, 21 February 2007, pp 45–46.

14.5 The tourist market in Indigenous arts and craft covers a wide spectrum of products, from boomerangs and t-shirts through to fine art. The National Association for the Visual Arts (NAVA) explained the market accordingly:

In looking at the whole of the industry, there is a continuum, if you like, from buying a design and putting it on a manufactured T-shirt or whatever right through to the fine art spectrum. It can be art and craft, and sometimes beautiful T-shirts come out of that spectrum. In the middle is art and craft work. Because the Indigenous art industry has grown so quickly and so exponentially, some of those wholesale practices result in work being produced for tourists at a price they can afford and are the sorts of things that they like.³

14.6 The significant growth in the market, as identified by NAVA above, has led to calls for better management of the Indigenous arts and craft industry to protect Indigenous communities from the impacts of tourism and commercial pressures in the wake of market expansion. Ms Jill Gientzotis advised the committee that NAVA's:

recommendations relate(ed) 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

14.7 While the Indigenous art market depends significantly on tourism for its survival, this has an impact on communities and art centres due to its seasonal nature in some areas. Ideas were put to the committee on ways to overcome seasonal impacts on the Indigenous art market, and the Cross Cultural Art Exchange outlined their suggestion to the committee:

One of the major issues with Darwin is the dramatic change from wet season to dry season, and historically there has been a massive decrease in tourism during the wet season. The idea of having an Indigenous art fair during the time of the Darwin festival has been explored. You could have it in the Chan building, although there are issues with that. Just like the Melbourne art fair, you would have segmented areas. Communities could then pay a nominal amount and utilise that time during the art awards. At the moment, there is such limited space here in Darwin—there are only however many commercial outlets—that there is the potential for six to 10 communities to be able to exhibit during that prime time. If there was an Indigenous art fair at one location during that time then everybody could capitalise on the mass influx of people.⁵

3 Ms Jill Gientzotis, National Association for the Visual Arts, *Committee Hansard*, 23 February 2007, p. 30.

4 Ms Jill Gientzotis, National Association for the Visual Arts, *Submission 27*, p. 11.

5 Mr Paul Johnstone, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 34.

14.8 Another issue affecting the market apart from seasonal fluctuations is the purpose behind the tourist visits to Indigenous communities, art centres, dealers and other sales outlets. Not all tourists are art collectors or wish to buy fine art. There are those who simply wish to purchase souvenirs or gifts, but do not have a particular knowledge of or interest in Indigenous art. Then there are those who specifically travel to Indigenous communities because they wish to experience the communities and art centres first hand with the specific purpose of purchasing art for their collections. One example of this type of collector was outlined by Mayke Kranenbarg:

There was an Austrian couple that returned to Australia every year since the last fourteen years and each time purchased Aboriginal artworks. As 'diehards' as they called themselves, they liked to extend their collection. What they liked about Warmun art were the natural ochres used and the 'spaciousness' of the paintings. The meanings of the paintings also attracted them: 'We like the way Aboriginal people connect with their land and with nature. It is a beautiful culture that we can learn from.' They preferred to visit art centres instead of buying art over the Internet as they wanted to encounter the artists in person. Visiting the country where paintings were produced also made them feel that they could connect more with the artworks.⁶

14.9 Although discussed only briefly in the preceding paragraphs, the different types of tourist markets need to be taken into account, in addition to all of the other issues covered in this report, if the industry is to continue to be successful. Dealers, art centres and other market participants would be wise to ensure they have continuing strategies in place to plan for, accommodate and educate buyers in different tourist categories, whether they are simply souvenir hunters or experienced fine art collectors.

14.10 Having said that, there are strategies in place, supported by government and other organisations to assist with the tourist education process. The Northern Territory has funded such an exercise:

So through ANKAAA, the Northern Territory government has funded the consumer brochures, which we now have in four languages, to assist tourists coming into the country to get some background and to understand copyright law, intellectual property, moral rights and all the different aspects of purchasing Indigenous art.⁷

14.11 The extent to which such educational initiatives are successful, or whether more support is needed, is not discussed here. A more detailed discussion about the education of buyers of Indigenous arts and craft is found in chapter seven of this report.

6 Mayke Kranenbarg, *Painting Authenticity, Aboriginal art and knowledge in an intercultural space* (Warmun, Western Australia), Cultural Anthropology, University of Nijmegen, June 2004.

7 Ms Stephanie Hawkins, Northern Territory Government, *Committee Hansard*, 20 February 2007, p. 6.

The international market

14.12 While it is obvious that many Indigenous creative and artistic works are sold within Australia – whether to local buyers or to overseas buyers and tourists who then take them offshore – the international marketplace, where Indigenous products are sold offshore, generates significant activity.

14.13 This section of the report will examine the views of witnesses to the inquiry about the size and scale of the international market for Australian Indigenous arts and craft, how viable the international marketplace really is for such works, the role of Austrade within the industry, and the level of support that is or could be provided by governments and other key bodies for encouraging further development and expansion of international markets.

Size and scale of the international market

14.14 As discussed in chapter two of this report, there do not appear to be definitive statistics showing the size and scale of the international market for Indigenous arts and craft. The Northern Territory Department for the Arts has observed that there is no clear information available on export earnings for Indigenous creative works. While there are categories like the 'export of wooden craft articles' they 'do not identify what is Indigenous and what is non-Indigenous'.⁸ Austrade has pointed out that the size of the overseas market has not been properly established and the monetary value of the market is difficult to assess due to the high level of non-commercial activity that may have been funded through government departments for various promotional reasons.⁹

14.15 In the early 1980s it was reported that around 80 to 90 per cent of Indigenous art and craft production ended up overseas¹⁰ however it is uncertain whether such levels have continued since that time. While this percentage is significant, it is likely that this figure includes both Indigenous products purchased within Australia and then taken overseas by travellers, and those products exported or exhibited and sold offshore to overseas buyers. Because this discussion centres mostly on establishing the size and scale of the international market, rather than looking at what has been sold within Australia's borders, it needs to be determined what proportion of the 80 to 90 per cent of work that purportedly ends up overseas is actually exported first and then sold offshore.

14.16 To come up with some specific figures on the size of the offshore or international market today there would need to be a collation of data from various segments of the market rather than just from one particular activity. The Cross

8 Dr Diana Leeder, Department of Natural Resources, Environment and the Arts, Northern Territory, *Committee Hansard*, 20 February 2007, p. 10.

9 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 25.

10 T. Pascoe, *Improving Focus and Efficiency in the Marketing of Aboriginal Artefacts*, Report to the Australia Council and Aboriginal Arts and Crafts Ltd, June 1981.

Cultural Art Exchange outlined what aspects of the industry they felt would need to be accounted for if some kind of accurate picture were to be formed about the extent of the offshore market:

We need accurate statistics on, first, how much of their work goes overseas from individual art centres and, secondly, whether those works go into a retail scenario or into a display scenario—so nonprofit or profit.... You could also extend that survey into all galleries to ascertain how much of the work goes overseas outside of the community arts centres. Then you would have a comparison between the commercial enterprise and the community art centres, which of course are also commercial art enterprises but different.... It would also be fantastic to see how much work goes overseas in general. Then you would have a final result and be able to subtract what goes out from commercial galleries that deal with arts centres, arts centres themselves and then others, and then you would know how much work goes overseas, roughly, that has perhaps come through areas outside of arts centres.¹¹

14.17 Although there is a lack of official data on the size and scope of the international market at this time, various observations have been made by industry participants regarding how large they perceive the market actually to be. These ideas largely appear to be in relation to the traders' own activities. For example, Maningrida Arts and Culture gave evidence to the committee about the extent of international sales within their own business, saying that 14 per cent of their sales were to overseas markets, and that they were happy that this was on the increase.¹² Similarly, Red Rock Art advised that what they considered to be a small percentage of their art 'would go directly overseas; possibly 10 per cent'.¹³

14.18 Others pointed out that their focus was not necessarily on international markets, as most of their activity was essentially domestic but that overseas clients did contribute to some of their business activity. Mr Claude Ullin, a dealer in Indigenous fine arts, explained to the committee that, while he did not think the international market was presently as strong as the domestic art market, it would certainly develop. He said it was attractive and relatively inexpensive to overseas buyers given the strength of the euro and the US dollar. He further went on to say that while the market was not that strong in America at the moment, it was certainly quite strong in Europe.¹⁴

14.19 Some Indigenous art dealers see the overseas market as essential to their operations, particularly in terms of internet sales helping to prop up the seasonal

11 Mr Paul Johnstone, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 40.

12 Ms Apolline Kohen, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 46.

13 Mr Kevin Kelly, Red Rock Art, *Committee Hansard*, 19 February 2007, p. 36.

14 Mr Claude Ullin, *Committee Hansard*, 11 April 2007, p. 44.

domestic market quiet periods. Mrs Pamela Linklater pointed out to the committee that it was during certain times of the year that overseas internet inquiries were good:

Yes, because of the incredible interest in overseas sales. It is at this time of the year that the internet kicks in, and I always say to the overseas people that it is because they are snowbound and icebound and they are looking at the computer. Whereas our busy time here is when they have got their summer over there and that is when they go away on holidays. But right now is a very good time for internet inquiries.¹⁵

14.20 Thus while there is no complete set of statistics showing the extent of market operations in the industry internationally, it is clear that industry participants each have their own views about what any exposure to the international marketplace means for them. While the percentage of international business may vary for different market participants, it seems to be generally agreed that international trade forms an important part of the industry and that opportunities for international trade are available for those wanting to be involved. As Mr John Odgers from Austrade told the committee:

The potential for return for the Australian experience seems to be there. The sales prices that perhaps are achieved in the primary market, but increasingly over the last few years in the secondary market, have been really quite substantial and if that were to flow into the international market, then the potential might well be for those very large prices to be recorded in the international market as well.... The response to Indigenous art from Australia has been overwhelmingly good. It is seen as a unique art form. Clearly the sort of work that is made here in Australia cannot be made anywhere else, so it is unique from that sense. It has been welcomed in art circles in a number of countries around the world to great acclaim. It is considered at times to be the only new contemporary art form of the last couple of decades.¹⁶

14.21 While the size of the international market and increasing potential for international sales does seem significant enough, the lack of consolidated statistics on the size and scale of the market could make it somewhat problematic for both private and public sector bodies to devote resources to and make decisions about their potential participation in the international marketplace in the future.

Recommendation 27

14.22 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.

15 Mrs Pamela Linklater, *Committee Hansard*, 19 February 2007, p. 4.

16 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 38.

Viability of the international market

14.23 It is argued that the international export market for Indigenous visual arts and craft is very successful. Mr John Odgers from Austrade pointed out during the hearings that he knew of galleries operating overseas that were 'constantly touring exhibitions of Aboriginal art or going to arts centres' and that they would not continue to do this unless it was profitable.¹⁷ The National Indigenous Council (NIC) also recognised the viability of the export market for Indigenous arts and craft, telling the committee that forging links into the international market 'was a good way to go'.¹⁸

14.24 The Northern Territory Government pointed out to the committee that some art centres feel that involvement in the overseas market is actually necessary for their survival in what is often a difficult market due to the isolation of Indigenous communities from the marketplace in general:

Even for those few art centres that have direct access to an urban retail outlet (for example, Maningrida in Darwin and Papunya in Alice Springs), this accounts for only a fraction of necessary sales volumes. Interstate and more recently, international, export is an obligatory marketing mode.¹⁹

14.25 The Cross Cultural Art Exchange is one enterprise that places significant emphasis on international sales and exhibitions, having recognised this as a viable marketplace for Indigenous arts. Mr Paul Johnstone explained to the committee how he became involved in this area:

I went on a trip to China about two years ago to have a look at the potential of exporting Indigenous art. I was horrified to see that three of the exhibitions I found in Hong Kong and one in Shanghai were basically carpetbag shows with no provenance. I requested to see the coding on the back of the paintings and I was denied. When I relayed that information to the community arts centres where these artists usually painted, they had no knowledge of the work going overseas at all. I realised that one of the problems that is going to exist in the future is that, as Indigenous art becomes more and more popular worldwide, the same issues that we are talking about today will be replicated on an international scale. So I wanted to then set up a company that would maintain quality, integrity and ethics through the arts centres to set up high quality shows overseas, particularly in America.²⁰

14.26 The Australian Trade Commission (Austrade) is a government agency the role of which is to support and assist Australian companies, individuals and organisations who want to become involved in the export market. The services that Austrade

17 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 38.

18 Dr John Moriarty, National Indigenous Council, *Committee Hansard*, 9 February 2007, p. 46.

19 Northern Territory Government, *Submission 57*, p. 28.

20 Mr Paul Johnstone, Cross Cultural Art Exchange, *Committee Hansard*, 20 February 2007, p. 33.

provide include giving practical export information and advice, the identification of overseas opportunities, on-the-ground exporting support overseas and in Australia, a comprehensive trade exhibition program, services to identify potential overseas business partners and to research and access high potential markets for Australian companies, and strategic export planning and network formation services. They also offer financial assistance via their Export Market Development Grants Scheme, where eligible businesses may be reimbursed for some their export costs.²¹

14.27 Some of the ways in which Austrade has supported the Indigenous arts and craft sector in particular were explained to the committee during the hearings:

Looking at Austrade's approach to promoting and developing the Indigenous art sector, currently there is a variety of approaches for exporting Indigenous art. Some of these include supporting buyer visits from Europe and the USA... Another way is through assisting with exhibitions at venues in overseas markets that have often been negotiated directly by Indigenous arts centres. Another way is assisting Australian galleries attending art fairs.²²

14.28 Austrade also outlined to the committee the difficulties they had encountered and concerns they had in dealing with the sector. They claimed that it was difficult to promote the sector without having 'consolidated data' and that there could be inconsistencies in the production, supply capacity and quality control of Indigenous arts. Also, they explained that in general micro businesses lacked the 'financial resources and time to devote to the export market'.²³ Austrade also identified that there could sometimes be a lack of art centre marketing skills suitable to deal with the inbound tourist market. Other issues that Austrade identified were:

The remoteness of production centres, a lack of understanding of business processes, and the affordability of Austrade services to develop long term marketing strategies.²⁴

14.29 While there are clearly Indigenous art and craft industry participants who see the export market as suitable for them, there are others who feel that the initial set up costs are prohibitive, and that ongoing involvement in this area is a financial challenge. As mentioned above, Austrade has recognised this as a problem for some, advising the committee that:

The challenge that appears to us from what has been reported to us is that the arts centres or the galleries do find it financially challenging to be involved, for example, in art fairs, which is a very significant way that art is sold internationally, because [of] the cost of those art fairs. The cost of the

21 Austrade web site, 'Austrade Services', <http://www.austrade.gov.au/Austrade-services1396/default.aspx>, accessed 8 May 2007.

22 Mr Patrick Donaldson, Austrade, *Committee Hansard*, 9 February 2007, pp 32–33.

23 Mr Patrick Donaldson, Austrade, *Committee Hansard*, 9 February 2007, pp 32–33.

24 Mr Patrick Donaldson, Austrade, *Committee Hansard*, 9 February 2007, pp 32–33.

freight, the cost of the travel and the people being involved and so forth has to come out of the profit made at the art fairs, and that is not necessarily happening. There is not enough profit being made overall to actually allow those businesses to go back to those art fairs regularly... The further challenge is with the arts centres in that they do not have the appropriate infrastructure or staffing and they are very remote, so there are things like freighting from the middle of Australia to Darwin. So all of those issues obviously require some sort of financial resource from some area, but we could not put a figure on it.²⁵

14.30 While Austrade has recognised the need for additional resources in the area, it has been suggested that Austrade needs to do more to assist art centres in that regard. For example, Warlayirti Artists in their submission to the inquiry pointed out that Austrade could help in more practical ways by having a program that would fund airfares and overseas accommodation to support art centres whilst they were developing international links and export opportunities.²⁶ Some art centres appear to have been afforded travel support by Austrade, but the financial extent of this support is unclear. Maningrida Arts and Culture advised the committee that Austrade had been good to them in assisting with travel, and while that support was more moral than financial, it was better than no support at all.²⁷

14.31 The perceived viability of the international market for Indigenous arts and craft seems to vary depending on the individual views and circumstances of each dealer or art centre. As discussed above, some see it as a highly viable activity, while others are constrained by financial and resourcing considerations. The scope seems to be there for further forays into international markets, but it appears that more needs to be done to support and encourage those organisations that might otherwise shy away from expanding into this area.

14.32 While financial support for such ventures is always helpful, it is not all that is required. As pointed out by Professor Howard Morphy, sponsorship of international exhibitions needs to be better supported with the appropriate expertise:

This is an area where one really needs to work in association with knowledgeable and expert curators. It is no good sponsoring exhibitions of poor quality Indigenous art, which quite often happens because the person happens to know someone who knows someone who has persuaded someone, without there being the proper interrogation or the proper reference group and so on. It is not difficult at all to create great exhibitions of Aboriginal art from Australia, but we have been very bad at generating those and sending them overseas.²⁸

25 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 37.

26 Warlayirti Artists, *Submission 10*, p. 3.

27 Ms Apolline Kohen, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 45.

28 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 71.

14.33 Ms Brenda Croft of the National Gallery of Australia also raised concerns about the quality of overseas exhibitions of Indigenous art being impacted upon by a lack of communication with appropriate experts in the area:

There is not enough discussion that goes on with, for example, embassies and coming to somewhere like the Aboriginal and Torres Strait Islander Arts Board, which is made up of Indigenous people. You will find out that an exhibition or whatever has been promoted through that embassy—I am speaking from first-hand experience here—which is perhaps not the best representation of what should be coming out of our country, or the person who has pulled it together is not someone that we would deal with here. There is a lack of information that is out there overseas by the people who purport to be promoting Indigenous culture from Australia and that has concerned me and my colleagues at the Arts Board of the Australia Council for quite some time. We are here; come and ask us. If there is a proposal or a project that comes to these places, then why isn't there a standard way of just going to the people who do know and then they can say yes or no, that this is going to be a good representation of what comes from this artist.²⁹

14.34 This suggests that if what is represented in overseas exhibitions of Indigenous arts and craft is questionable, then this can in turn have an impact on the viability of the future market. In other words, if what is being represented overseas as Indigenous art is not of sufficient standard or is not authentic then this has the potential to affect the reputation of the industry and Indigenous artists, and to deter international investors and collectors from buying it in the future. In recognition of this, calls have been made for better industry controls and regulations. The Cross Cultural Art Exchange discussed this issue in their submission to the inquiry:

This year saw an increase in major exhibitions presented internationally, amplifying the need to control the integrity of the industry, the quality of the work and to ensure the fair distribution of money back to the artists and their respective communities. As interest in Indigenous art grows globally, it is imperative for exhibitions to be ethical. There is a risk of national issues being transferred to the international market. The wildly fluctuating prices being generated between auction houses and the commercial outlets only increase consumer confusion of the market. Regulation is paramount to prevent international markets becoming apprehensive.³⁰

14.35 Further supporting this call for better industry controls, Dr Diane Mossenson pointed out the perceived lack of focus by Austrade in ensuring the quality and ethical acquisition of the Indigenous arts and craft that were being exported or exhibited overseas:

Also, I think that Austrade, because of their brief to take any company overseas that is export ready, in some ways, do not really screen the quality, quantity or sourcing of the Aboriginal artworks. So, at this moment, there is

29 Ms Brenda Croft, National Gallery of Australia, *Committee Hansard*, 9 February 2007, p. 59.

30 Cross Cultural Art Exchange, *Submission 16*, p. 5.

a large proportion of B-grade and C-grade work, in my humble opinion, that is going overseas and is sourced through less than ethical situations where the artists themselves are not getting any real major benefit from it.³¹

14.36 During the hearings the committee questioned Austrade as to whether any assessments were conducted by them to determine the ethical behaviour of businesses wanting to export Indigenous products overseas, or to assess the provenance of the Indigenous art and craft products. Austrade advised the committee that whether or not a company acted ethically or morally was not part of their assessment process. However, they advised the committee that they were not aware of any problems in this area:

We can fairly safely say that across those arts centres and galleries with whom we have had dealings, we have not been made aware of any ethical problems or issues related to those particular business clients that we deal with. If, for example, we work with a gallery that wishes to promote its art overseas, part of the success, it would seem, of those galleries is the correct provenance of the artwork. That is an accepted process across the world in terms of selling art. We have not been made aware of there being any irregularities with the provenance of the work from those galleries. They have been relatively successful, so we can only assume that the provenance of their work is correct.³²

14.37 Austrade went on to further advise the committee that there was also a considerable amount of commercial activity in relation to the international export of Indigenous Australian art in which Austrade had no involvement. They pointed out that some Aboriginal arts centres had been independently exporting for some time, and that there were also things like non-commercial international cultural awareness programs run by other government departments and organisations that did not involve Austrade at all.³³

Recommendation 28

14.38 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.

14.39 Despite such concerns, the international marketplace for Indigenous arts and craft is currently still a viable consideration. As Austrade reinforced, there would not be a large number of exporters in the industry if it was not profitable to be involved.³⁴ While Austrade recognises that start-up costs are significant, they state that over time

31 Dr Diane Mossenson, Australian Commercial Galleries Association, *Committee Hansard*, 23 February 2007, p. 9.

32 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 33.

33 Mr Patrick Donaldson, Austrade, *Committee Hansard*, 9 February 2007, p. 33.

34 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 25.

these costs will balance out and profits will eventuate. Initially when art galleries representing Indigenous artists or art centres start in export it would not be unusual for them to experience a negative return, and in recognition of these difficulties, Austrade has an Export Market Development Grants Scheme that allows any business that is starting in export to claim a reimbursement against its costs.³⁵

14.40 Desart is one organisation that has recognised the support that Austrade offers art centres and other exporters to assist them with getting involved in the international market:

We have been very encouraged by the interest shown by Austrade, and we have worked closely with the Northern Territory government and Austrade in the inbound trade missions. This is the third year that they will operate. Important connections have been made with international markets. The trade mission that we hosted with Austrade and the Northern Territory government last year led to direct sales in excess of \$100,000 and the organisation of some seven exhibitions overseas. We also worked with Austrade on a consultancy to develop pathways.³⁶

14.41 However, Desart also highlighted the difficulties for art centres wanting to take up Austrade's Export Market Development Grants Scheme. They argued that not many art centres had been able to take up the scheme because the payments were limited to particular categories and the payments were retrospective, so people who did not have the funds up front were finding it difficult to get started.³⁷

14.42 Despite such obstacles, it was pointed out to the committee by the Northern Territory Government that the export market provided growing opportunities in the area:

In a sense, the establishment of a growing international export trade, with art centres marketing directly into these markets, is a fulfilment of the historic task of the Aboriginal visual arts and craft industry: it has always embraced economic, community and cultural development. It is an industry that is now taking these ideas on to the world stage.³⁸

Further developing the international market

14.43 There are those who believe the international market for Indigenous arts and craft could most certainly be expanded.³⁹ There has been much discussion throughout the inquiry on how this expansion could be achieved. While there are existing programs that might assist Indigenous artists and their representatives to further

35 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 38.

36 Mr John Oster, Desart, *Committee Hansard*, 21 February 2007, pp 28–29.

37 Mr John Oster, Desart, *Committee Hansard*, 21 February 2007, p. 29.

38 Northern Territory Government, *Submission 57*, p. 30.

39 National Association for the Visual Arts, *Submission 27*, p. 11.

penetrate the international market, some argue that these programs may not go far enough. Ms Hetti Perkins, an Indigenous Art Curator from the Art Gallery of NSW, advised the committee:

We believe there should be enhanced support for existing institutions, in our instance, state or national fine art institutions who have best practice models, in order that we can pursue opportunities for artists internationally through exhibition, publishing and programs.⁴⁰

14.44 Similarly, Mbantua Gallery stated:

I honestly don't think the Federal Government does anywhere near enough to promote the art overseas...Our gallery has been travelling overseas for the past 6 years now on our own initiative to promote the art (and this benefits all galleries). It is hard work to be quite honest.⁴¹

14.45 There were various suggestions put to the committee about what more can be done to assist with expansion and further development in the area. Better education of buyers in the marketplace was one area where a number of witnesses saw the need for improvements:

When we look at the international markets, my personal view is that we should be focusing first on educating those markets about the diversity of the Indigenous art industry so that people are making informed choices about how they invest and how they engage. Before we invite them to invest, we need to do all of that work. We need to think about what that market is and how we want to grow it.⁴²

14.46 Improvements in education were also supported by Maningrida Arts and Culture, who told the committee that in order to help access new markets, more educational and promotional efforts were required 'to make Aboriginal art better known overseas'. They further pointed out that 'exposure to good quality works through educational shows' would provide encouragement for art centres to establish new markets.⁴³ As was outlined in their submission:

There is a need to educate the international market about Aboriginal art. Too often, the commercial shows one can see overseas are of poor quality and do not reflect the quality of current art production. I have seen many shows organised by carpetbaggers in Europe that give a poor name to Aboriginal art. Only a handful of successful arts centres such as Papunya Tula Artists and MAC have been able in recent years to organise quality shows overseas. This year, MAC had successful shows in the Kingdom of

40 Ms Hetti Perkins, Art Gallery of NSW, *Committee Hansard*, 9 February 2007, p. 53.

41 Mbantua Gallery, *Submission 24*, p. 3.

42 Ms Jill Gientzotis, National Association for the Visual Arts, *Committee Hansard*, 23 February 2007, p. 21.

43 Ms Apolline Kohen, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 43.

Bahrain, France and United Kingdom. MAC is National finalist in the 2006 Export Awards and is planning to dedicate more energy to expand its presence on the international art scene. However, a lot could be done to further developing international markets for Aboriginal artists through intelligent funding programs.⁴⁴

14.47 Austrade also recognised the need for increased investment in education, informing the committee that, for the export of Indigenous art to be successful in the long term, a significant investment was required in education and cultural awareness promotion.⁴⁵ As Mr John Odgers told the committee:

There was the opening of the new museum in Paris, which has quite a lot of Australian Indigenous artwork in the building as well as in the collection. That type of non-commercial exposure certainly helps potential collectors and buyers to understand Indigenous arts. Therefore it helps them to be confident in purchasing the work, but that type of promotion and education needs to be expanded quite considerably if we were to reach a point where we said that the export of Indigenous art was at a very high level and was continually successful and sustainable. That is the first stage thing.⁴⁶

14.48 The Australia Council suggested a strategy that would assist in this area of education by building on current successes, such as the new museum in Paris mentioned above. They proposed an initiative called 'Showcasing the Best—Indigenous Australia to the World' as a strategy to provide funding to promote and profile Indigenous arts and craft internationally. The Australia Council argued that it would:

Particularly build on the interests and opportunities created by the opening of the Musee de Quai Branly in Paris and by Undergrowth—Australian Arts UK, in which Indigenous arts had a significant presence.⁴⁷

14.49 Some art dealers have already become more involved in exhibiting overseas, with Papunya Tula Artists telling the committee that the level of interest overseas has increased in line with the growing exposure of Aboriginal art, and that this year:

PTA has been involved in very successful international exhibitions in France, United Kingdom, United States, Korea, Germany and Singapore. Whilst five of these exhibitions were selling shows, there is enormous benefit to be gained through non-selling shows in public galleries or institutions. Simply making the work accessible to the general public through an international touring exhibition program increases the exposure

44 Maningrida Arts and Culture, *Submission 51*, pp 4–5.

45 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 36.

46 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 36.

47 Dr Chris Sarra, Australia Council for the Arts, *Committee Hansard*, 23 February 2007, p. 90.

of the work and provides a platform to open up and establish new markets.⁴⁸

14.50 Another issue raised during the inquiry was the need for increased funding in order to encourage the growth of the international market. Aranda Aboriginal Art argued in their submission that to promote the Aboriginal art scene internationally, 'more aggressive funding, financial assistance and promotion' was required, and that new markets such as Asia should be the focus.⁴⁹

14.51 Art curators were also concerned about insufficient funding for the area. Ms Hetti Perkins told the committee:

One of the issues that has come up in the ability of institutions to create these international opportunities is the lack of financial support. In the corporate sector, the philanthropic and also the government sector, there is just not the funds required to mount these major exhibitions overseas and to reach those very high art audiences that are really the taste makers or decision makers for the consumers of art all around the world.⁵⁰

14.52 Financial support to promote and exhibit overseas was not the only element considered to be critical to the success of the Indigenous art market internationally. As Lauraine Diggins pointed out, financial support also needed to be combined with other improved forms of assistance to help promote the success of the sector:

It would be extremely advantageous for dealers intending to exhibit overseas to have sensible government support. This is best applied to both financial support and professional assistance in regard to lobbying to assist the dealers where appropriate. I have found that Austrade, while friendly, needs to earn its income, it is usually unskilled in regard to assisting in the arts area.⁵¹

14.53 Austrade was well aware of the need for improved assistance for Indigenous artists to market and promote their work overseas, and advised the committee that they had recently commissioned a report by ANKAAA and Desart to ascertain potential alternative routes to that market.⁵² While Austrade appeared to be assisting with developments in the area, some groups felt the need for more involvement by Austrade. For example, the Australian Commercial Galleries Association was keen to work with Austrade, the government and other bodies in the industry to further develop the area, telling the committee:

We also look to the government to involve the ACGA in developing the overseas market either alone or in conjunction with Austrade and the

48 Papunya Tula Artists Pty Ltd, *Submission 14*, p. 6.

49 Aranda Aboriginal Arts, *Submission 83*, p. 14.

50 Ms Hetti Perkins, Art Gallery of NSW, *Committee Hansard*, 9 February 2007, p. 53.

51 Lauraine Diggins Fine Art, *Submission 26*, p. 4.

52 Mr John Odgers, Austrade, *Committee Hansard*, 9 February 2007, p. 38.

Australia Council. Many of our ACGA members have had experience in the international market, and I think for that reason they know some of the requirements to enable successful export of the product. I think they could be a valuable resource in assisting you in coming to some conclusion, particularly in the arts industry.⁵³

14.54 Ms Perkins also felt that Austrade's services in helping create export opportunities for Indigenous art could be enhanced by making use of the initiatives established by other organisations with experience in the field:

Insofar as future opportunities go and particularly with the international markets, just to reiterate, we feel that national, state and regional galleries, keeping places et cetera can and would take a lead in this regard and create initiatives to create a platform for Austrade and others to encourage people to export or to promote their work overseas. We feel that would have a very strong flow-on effect in terms of people in Australia sitting up and really taking notice. It is always that you do not see what is in your back yard until someone else tells you that it is there.⁵⁴

14.55 The Australia Council is one organisation that has taken a lead in creating such initiatives, advising the committee that they were, among other things, targeting funding towards international marketing strategies and other arts and culture related areas.⁵⁵ The committee also notes the Government's 'Australia on the World Stage' initiative, a commitment of \$20.4 million over four years to 'showcase Australian arts and our other cultural assets to the world'.⁵⁶ This will be implemented through the Australia International Cultural Council, the membership of which includes a representative of the Australia Council, as well as Ms Hetti Perkins, Senior Curator, Aboriginal and Torres Strait Islander Arts, Art Gallery of NSW.⁵⁷

Recommendation 29

14.56 The committee recommends that the Commonwealth support increased efforts to showcase Indigenous visual arts and craft internationally.

14.57 In conclusion, it is apparent that many witnesses to the inquiry feel that there exists a thriving international market for Australian Indigenous arts and craft, and that this market has significant potential. However, they generally believe that more support is needed in order to continue to promote and exploit the significant

53 Dr Diane Mossenson, Australian Commercial Galleries Association, *Committee Hansard*, 23 February 2007, p. 6.

54 Ms Hetti Perkins, Art Gallery of NSW, *Committee Hansard*, 9 February 2007, p. 53.

55 Ms Lydia Miller, Australia Council for the Arts, *Committee Hansard*, 23 February 2007, p. 91.

56 The Hon. Alexander Downer MP and The Hon. Warren Truss MP, Joint Media Release, *Budget 2007–08*, 8 May 2007.

57 DFAT, Members of the Australia International Cultural Council, <http://www.dfat.gov.au/aicc/paca/members.html>, accessed May 2007.

opportunities that are available in the future, and that both education and funding are key elements in the future success of the market.

14.58 The committee agrees that there is great potential, underpinned by both domestic and international markets, for this industry to both grow steadily and be sustainable. It hopes that the implementation of the recommendations in this report; the progress made by NAVA and other groups on a Commercial Code of Conduct; and the fruitful labours of the many people in Indigenous arts and craft, first and foremost the artists, will ensure that one of Australia's most extraordinary contributions to culture worldwide will continue to grow and evolve.

Senator Alan Eggleston
Chair

Appendix 1

Submissions

- 1 Ms Belinda J Scott
- 2 Mr Michael Reid
- 3 Birrung Gallery Sydney
- 4 Mr Robert Stuurman
- 5 ArtsSA
- 6 Mr Alex Malik
- 7 Museum & Gallery Services Queensland
- 8 Creative Economy Pty Ltd
- 9 Queensland University of Technology
- 10 Warlayirti Artists
- 11 Professor Jon Altman
- 12 Mr Brian Tucker
- 13 Ms Lotte Ghielen
- 14 Papunya Tula Artists Pty Ltd
- 15 artsource – the artists foundation of WA Ltd
- 16 Cross Cultural Art Exchange
- 17 The Rainbow Serpent
- 18 Department of Culture and the Arts, WA
- 19 Australian Indigenous Art Trade Association
- 19A Australian Indigenous Art Trade Association (Supplementary Submission)
- 19B Australian Indigenous Art Trade Association (Supplementary Submission)
- 20 The Artists of Ampilatwatja
- 21 Japingka – Indigenous Fine Art Gallery
- 22 Ms Monique Weemstra
- 23 National Indigenous Council
- 24 Mbantua Gallery
- 25 Identart

- 25A Identart (Supplementary Submission)
- 26 Lauraine Diggins Fine Art
- 27 National Association for the Visual Arts (NAVA)
- 28 The University of Queensland
- 29 Austrade
- 30 Griffith University
- 31 Caruana Fine Art
- 32 Professor R John Watling & Ms Rachel L Green
- 33 Mr Peter Garrett AM MP
- 34 Marshall Arts
- 35 Department of Industry and Resources, Western Australia
- 36 Arts Law Centre of Australia
- 37 NSW Aboriginal Justice Advisory Council
- 38 The Australia Council
- 39 The Wilin Centre for Indigenous Arts and Cultural Development, Victorian
College of the Arts
- 40 Gab Titui Cultural Centre
- 41 Ms Christine Godden
- 42 Indigenous curators of Aboriginal and Torres Strait Islander art
- 43 Australian Art Market Report
- 44A Viscopy
- 45 Arts Law Centre of Queensland Inc
- 46 Ananguku Arts & Culture Aboriginal Corporation
- 47 Ms Jennifer Herd
- 48 Mr Alec O'Halloran
- 49 Desart
- 50 Department of Communications, Information Technology and the Arts
- 50A Department of Communications, Information Technology and the Arts
(Supplementary Submission)
- 51 Maningrida Arts & Culture
- 52 Waringarri Aboriginal Arts

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- 52A Waringarri Aboriginal Arts (Supplementary Submission)
- 53 Arts NSW
- 54 Department of Foreign Affairs and Trade
- 55 A P Bond – Art Dealer
- 56 Ms Ali Cobby Eckermann
- 57 Northern Territory Government
- 58 Queensland Government
- 59 Arnold Bloch Leibler & Jirrawun Arts Corporation
- 60 Australian Competition & Consumer Commission
- 61 Mr Will Owen
- 62 Mr Jason Davidson
- 62A Mr Jason Davidson (Supplementary Submission)
- 63 Association of Northern, Kimberley and Arnhem Aboriginal Artists (ANKAAA)
- 63A Association of Northern, Kimberley and Arnhem Aboriginal Artists (ANKAAA) (Supplementary Submission)
- 64 Dr B Korman
- 65 Art Mob – Aboriginal Fine Art
- 66 Department of Employment and Workplace Relations
- 67 Lockhart River Arts and Cultural Centre
- 68 artmark Australia
- 69 Ms Carole Best
- 70 Arts Victoria
- 71 Ms Isabelle de Beaumont
- 72 Confidential
- 73 Warakurna Artists
- 74 Red Rock Art Gallery
- 75 Name Withheld
- 76 Ms Beverley Knight
- 77 Ms Janet Clayton
- 78 Dr Diane Mossenson
- 79 Tangentyere Artists

- 80 Mr John R Walker
- 81 Australian Customs Service
- 82 Australian Commercial Galleries Association
- 83 Aranda Aboriginal Art
- 83A Confidential
- 84 Te Manatu Taonga/Ministry for Culture and Heritage, New Zealand
- 85 Utopia Art Sydney
- 86 Confidential
- 87 Confidential
- 88 Fire-Works Gallery
- 89 Didgeri Air Art Tours & Palya Art

Appendix 2

Public hearings

Friday, 9 February 2007 – Canberra

Department of Communications, Information Technology and the Arts

Ms Lynn Bean, Acting Deputy Secretary, Arts and Sport
Ms Lyn Allan, General Manager, Indigenous Arts and Training

Mr Wally Caruana, Private capacity

Austrade

Mr Patrick Donaldson, Project Manager, Industry Policy Unit
Mr John Odgers, Senior Export Adviser, Arts, Culture and Entertainment

National Indigenous Council

Dr John Moriarty, Member
Ms Elysebeth Fraser-Price, Secretariat Officer

Collective of Indigenous Curators

Ms Brenda Croft, Senior Curator, Aboriginal and Torres Strait Islander Art,
National Gallery of Australia
Ms Hetti Perkins, Senior Curator, Aboriginal and Torres Strait Islander Art, Art
Gallery of NSW

Professor Howard Morphy, Private capacity

Professor Jon Altman, Private capacity

Monday, 19 February 2007 – Kununurra

Mrs Pamela Linklater, Private capacity

Waringarri Aboriginal Arts

Ms Cathy Cummins, Manager
Mr Kim Griffiths, Employee and Committee Member

Red Rock Art

Mr Kevin Kelly, Manager

Jirrawun Arts

Mr Tony Oliver, Chief Executive Officer and Artistic Director
Mr Freddie Timms, President and Artist

Warlayirti Artists Aboriginal Corporation

Ms Annette Cock, Art Centre Manager

Tuesday, 20 February 2007 – Darwin

Department of Natural Resources, Environment and the Arts, Northern Territory

Ms Marion, Scrymgour, Minister for Arts and Museums, Northern Territory Government
Dr Diana Leeder, Executive Directors, Arts and Museums
Ms Stephanie Hawkins, Manager, Indigenous Arts Development Unit, Arts NT

Association of Northern, Kimberley and Arnhem Aboriginal Artists (ANKAAA)

Ms Susan Congreve, Interim Manager
Ms Miriam Charlie, Chairperson and Executive Committee Member
Mr Djambawa Marawilli, Chairperson and Executive Committee Member
Mr Regis Pangiraminni, Chairperson and Executive Committee Member
Ms Donna Burak, Executive Committee Member

Cross Cultural Art Exchange

Mr Paul Johnstone, Director

Maningrida Arts and Culture

Ms Apolline Kohen, Director

Wednesday, 21 February 2007 – Alice Springs

Papunya Tula Artists Pty Ltd

Mr Paul Sweeney, Manager
Mr Luke Scholes, Assistant Manager

Desart

Mr John Oster, Executive Officer
Mr Jimmy Frank, Deputy Chair
Mrs Amelia Turner, Artist

Warlukurlangu Artists

Mrs Cecilia Alfonso, Manager
Ms Gloria Morales-Segovia, Assistant Manager
Ms Andrea Martin, Artist, Cultural Liaison Office
Ms Joy Brown, Artist from Nyirripi
Ms Mary Brown, Artist from Nyirripi
Mrs Bess Price, Artist

Artists of Ampilatwatja

Mr Narayan Kozeluh, Art Coordinator

Mr Tim Jennings, Private capacity***Friday, 23 February 2007 – Sydney*****Australian Commercial Galleries Association**

Mr Christopher Hodges, Private capacity
Mrs Beverly Knight, State Chairman, Victorian Chapter
Dr Diane Mossenson, State Chairman, Western Australian Chapter

National Association for the Visual Arts Ltd (NAVA)

Ms Tamara Winikoff, Executive Director
Ms Merrilee Kessler, Projects Manager
Ms Jill Gientzotis, Consultant

The Rainbow Serpent Pty Ltd

Mr Brad Parnes, Director

Viscopy Ltd

Ms Chryssy Tintner, Chief Executive Officer
Ms Joanne Brown, Indigenous Women's Officer

Australian Competition and Consumer Commission

Mr Nigel Ridgway, General Manager, Compliance Strategies Branch
Mr Michael Kiley, Acting General Manager, Enforcement and Coordination
Branch
Ms Jacqueline Thorpe, Director, Consumer Section

Mr Michael Reid, Private capacity

Arts Law Centre of Australia

Ms Robyn Ayres, Executive Director
Ms Patricia Adjei, Indigenous Solicitor

Australia Council for the Arts

Ms Kathy Keele, Chief Executive Officer
Ms Lydia Miller, Executive Director, Aboriginal and Torres Strait Islander Arts
Dr Chris Sarra, Chairperson, Aboriginal and Torres Strait Islander Arts Board
Ms Terri Janke, Expert Adviser

Mr John Ioannou, Private capacity

Tuesday, 10 April 2007 - Canberra

Australian Indigenous Art Trade Association

Dr Martin Wardrop, Vice President

Mr Brian Tucker, Private capacity

Department of Communications, Information Technology and the Arts

Ms Lynn Bean, Acting Deputy Secretary, Arts and Sport
Ms Lyn Allan, General Manager, Indigenous Arts and Training

Wednesday, 11 April 2007 – Canberra

IdentArt Pty Ltd

Mr J Easterby-Wood, Partnering Director
Dr Peter Toyne, Partnering Director
Mr Scott Wilson, Deputy Director

Department of Employment and Workplace Relations

Ms Mary-Anne Sakkara, Assistant Secretary, Community Development and
Employment Future Directions Branch

Ms Jo Wood, Assistant Secretary, Business and Policy Branch

Creative Economy Pty Ltd

Ms Helene George, Director

Mr Claude Ullin, Private capacity**Artmark Australia**

Mr Kim Willison, Managing Director

Appendix 3

Tabled documents, additional information and answers to questions taken on notice

Tabled Documents

Indigenous Arts Consultancy – Indirect Export Model, August 2006, tabled by Austrade, 9 February 2007

Arts Grants Guidelines 2007, tabled by Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, 20 February 2007

Northern Territory Indigenous Arts Strategy – Building Strong Arts Business, tabled by Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, 20 February 2007

Audit of Employment Opportunities in Remote Communities in the Northern Territory, August 2006, Local Government Association of the Northern Territory, tabled by Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, 20 February 2007

Copy of Minister's speech, *Desert Mob Symposium 2006: drawing a line in the sand*, tabled by Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, 20 February 2007

Extract from Hansard of 14 February 2007, Ministerial Statement – *Aboriginal Visual Arts and Craft Industry in the Northern Territory*, tabled by Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, 20 February 2007

Maningrida Arts & Culture, *Annual Report 2005-2006*, tabled by Ms Apolline Kohen, Arts Director, Maningrida Arts and Culture, 20 February 2007

Copy of opening statement and documents about overseas sales, tabled by Dr Diane Mossenson, 23 February 2007

Label of Authenticity and a copy of *Wholesale for Wholesalers*, tabled by Mr Brad Parnes, Director, The Rainbow Serpent, 23 February 2007

Arts Law Centre of Australia – Indigenous Enquiries Received 2004-2006, tabled by Ms Robyn Ayres, Executive Director, Arts Law Centre of Australia, NSW, 23 February 2007

Australia Council for the Arts, *Opening Statement*, tabled by Ms Lydia Miller, Executive Director, Aboriginal and Torres Strait Islander Art, Australia Council, 23 February 2007

Australia Council response to the *Proposed Resale Royalty Arrangement: Discussion Paper* released by the Department of Communications, Information Technology and the Arts, 16 September 2004, tabled by Ms Lydia Miller, Executive Director, Aboriginal and Torres Strait Islander Art, Australia Council, 23 February 2007

Additional Information

Taking Action, Gaining Trust – A National Indigenous Consumer Strategy: Action Plan 2005-2010

Competition and consumer issues for Indigenous Australians, Jon Altman and Sally Ward, provided by Professor Jon Altman, 9 February 2007

'Painting Authenticity, Aboriginal art and knowledge in an intercultural space' (Warmun, Western Australia), and summary of article, provided by Mayke Kranenbarg, 31 October 2006

Report of the Contemporary Visual Arts and Craft Inquiry (The Myer Report, 2002)

The Indian Arts and Crafts Act of 1990, provided by Mr Will Owen, 13 December 2006

Guide to Unconscionable Conduct, provided by the Australian Competition and Consumer Commission, 21 December 2006

Report on Boomalli Aboriginal Artists Co-Operative Ltd. Marking out the future; Boomalli Aboriginal Artists Co-Operative Limited Strategic Plan FY2003; Boomalli Aboriginal Artists Co-Operative Report on Current Status of Activities, provided by Matthew Poll, Artistic Director, 29 March 2007

Toi iho™ maori made, provided by Te Manatu Taonga/Ministry for Culture and Heritage, New Zealand

Department of Communications, IT and the Arts – Funding for Indigenous arts and craft, 14 February 2007

Australia Council – Funding for Indigenous arts and craft, 18 May 2007

Attorney-General's Department – Indigenous communal moral rights, 24 May 2007

Indigenous Business Australia – support for the Indigenous arts and craft sector, 4 June 2007

Answers to questions taken on notice

Department of Communications, IT and the Arts – Shared Responsibility Agreements (SRAs), 9 February 2007

Department of Communications, IT and the Arts – DCITA regional network staff, 9 February 2007

Department of Communications, IT and the Arts – Resale Royalty, 9 February 2007

Department of Communications, IT and the Arts – State and Commonwealth funding, 9 February 2007

Australian Competition and Consumer Commission – Book up: ACCC Role and Activities, 23 February 2007

Australian Competition and Consumer Commission – Indigenous Employment and the ACCC, 23 February 2007

National Association for the Visual Arts Ltd – Response to DCITA's Resale Royalty discussion paper, 23 February 2007

National Association for the Visual Arts Ltd – Resale right: the major legislative issues, 23 February 2007

National Association for the Visual Arts Ltd – Aboriginal and Torres Strait Islander Arts staff within peak non-Indigenous organisations, 23 February 2007

Department of Employment and Workplace Relations – answers to questions taken on notice at the public hearing on 11 April 2007 (14 May 2007)

Department of Communications, IT and the Arts – updated list of Shared Responsibility Agreements, 23 May 2007

Department of Communications, IT and the Arts – answers to questions taken on notice at the public hearing on 10 April 2007 (23 May 2007)

Appendix 4

Australian Competition and Consumer Commission – correspondence, 8 June 2007

ACCC review of submissions and verbal evidence for indicators of potential breaches of the *Trade Practices Act 1974 (Cth)* and a discussion of possible outcomes

Executive Summary

This response to the Inquiry into Australia's Indigenous Visual Arts and Craft Sector (**the Inquiry**) details the request to the Australian Competition and Consumer Commission (**the ACCC**) to review the submissions and verbal evidence provided to the Inquiry for indicators of possible breaches of the Trade Practices Act 1974 (Cth) (**the TPA**). The response provides background information on the relevant provisions of the TPA before summarising the ACCC's review of the evidence and what the ACCC is doing having regard to what information and evidence was identified in its review of the submissions and transcripts.

The review identified some possible indicators of unconscionable conduct. Although none of the evidence related to ongoing conduct ACCC staff have identified lines of inquiry for identifying any current or ongoing conduct that may breach the TPA. The ACCC has already begun to pursue those lines of inquiry, contacting submission authors and meeting with Art Centre representatives in Central Australia and the Top End. The ACCC has a further visit to Alice Springs scheduled during which it anticipates meeting with artists who may be able to provide first hand evidence of unconscionable conduct. The ACCC also continues to monitor the development of the National Indigenous Art Commercial Code of Conduct and associated Ethical Trading Strategies while maintaining its regular educative and outreach role as relevant to Indigenous communities generally and the Indigenous Visual Arts and Craft Sector.

Having regard to the submissions and transcript and subsequent discussions with industry participants, the ACCC considers enforcement activity under the TPA will not completely resolve ongoing concerns about unscrupulous and unethical conduct in the Australia's Indigenous Visual Arts and Craft Sector. The ACCC recommends other strategies be supported and implemented with a view to long-term solutions, including empowerment and reduction in vulnerability.

Background

The Senate Standing Committee on the Environment, Communications, Information Technology and the Arts (**the Committee**) is currently conducting an Inquiry into Australia's Indigenous Visual Arts and Craft Sector. The Inquiry was convened in

August 2006. The Committee which is due to report its findings on June 12 2007 received a total of 89 written submissions and conducted public hearings across the nation generating a further 408 pages of transcript.

The ACCC has provided assistance to the Committee by making submissions, responding to enquiries and participating in the public hearing process. After appearing before the Committee the ACCC provided supplementary information on indigenous employment in the ACCC, and book-up practices.

One of the terms of reference for the Inquiry was “*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*”. Having regard to particular submissions in respect of this term of reference specifically, as well as some of the more general submissions, the Committee asked the ACCC whether concerns had been raised with the ACCC and further, whether the ACCC would be prepared to review the submissions and verbal evidence to the Inquiry. The ACCC subsequently responded by letter on 3 April 2007 outlining previous concerns regarding conduct in the Indigenous Visual Arts and Craft Sector that had been raised with the ACCC. The ACCC now reports on its review of the submissions and transcript of the Inquiry.

Relevant sections of the Trade Practices Act

The ACCC has reviewed those submissions and transcript with a view to identifying any indicators of potential breaches of the TPA. The ACCC has reviewed the submissions and transcript for evidence of both misleading and deceptive conduct and possible indicators unconscionable conduct in breach of Part IVA of the TPA. The ACCC has previously provided the Committee with a copy of its *Guide to unconscionable conduct* however the following points are provided to focus attention on the sections most relevant to the alleged conduct, in particular sections 51AA (general conduct) or 51AC (conduct between businesses).

Section 51AA provides:

- (1) *A corporation must not, in trade or commerce, engage in conduct that is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.*
- (2) *This section does not apply to conduct that is prohibited by section 51AB or 51AC.*

Section 51AA is a broad prohibition against unconscionable conduct as determined through the decisions of the courts over time. Unconscionable conduct is not a static concept but generally defined it is conduct which is so unreasonable that it goes against good conscience. The unreasonableness is determined having regard to the specific circumstances of each case that comes before the court. Over time judges have given some broad definitions in attempts to quantify exactly what unconscionable conduct encompasses. Without seeking to demonstrate the entire

breadth of the law, the following judicial comments provide some guidelines for demonstrating unconscionable conduct:

- Serious misconduct or something clearly unfair or unreasonable
- An overwhelming case of unreasonable, unfair, bullying and thuggish behaviour
- Actions showing no regard for conscience, or are irreconcilable with what is right or reasonable
- Unconscientious advantage is taken of an innocent party whose will is overborne so that it is not independent and voluntary
- Advantage is taken of an innocent party who...is unable to make a worthwhile judgement as to what is in his best interest

Section 51AC provides:

(1) A corporation must not, in trade or commerce, in connection with:

...
(b) the acquisition or possible acquisition of goods or services from a person (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

Section 51AC also provides a number of factors the court may have regard to in determining whether a business has engaged in unconscionable conduct under section 51AC. In the context of Indigenous artists and commercial acquirers of their art (**dealers**) those factors may be stated as follows:

- the relative bargaining strengths of the artist and the dealer
- whether the artist was required to comply with conditions not ‘reasonably necessary’ to protect the legitimate interests of the dealer
- whether the artist was able to understand any documentation used
- whether the dealer used undue influence or pressure, or unfair tactics
- the price and terms on which the artist could have sold the same or equivalent artwork elsewhere
- the extent to which the dealer’s conduct was consistent with dealings with other artists
- whether the dealer met the requirements of any applicable industry code
- whether the dealer met the requirements of any other industry code (such as a voluntary code), if the artist had the reasonable belief the dealer would abide by that code
- the extent to which the dealer failed to disclose any intended conduct (and any risks arising from this conduct) that might affect the artist
- the extent to which both the artist and the dealer acted in good faith.

Importantly, these factors are not intended to be exhaustive, and the Court may have regard to any other factors it considers relevant. The Court will determine whether the

conduct is unconscionable by having regard to **all** the circumstances, meaning, therefore, that each of these factors in isolation may not amount to unconscionable conduct.

Section 6 of the TPA extends prohibitions against corporations to individuals in certain circumstances including where conduct has occurred in a territory, for example, the Northern Territory.

ACCC Activity

In response to the Committee's request the ACCC has allocated experienced staff in the Darwin, Melbourne and Canberra offices to consider the issues raised before the Committee in submissions and public hearings. ACCC staff have reviewed all the public evidence provided to the Inquiry. Following that review ACCC staff have travelled to Alice Springs to assess the evidence available from Indigenous Art Centre representatives and have contacted several other organisations who provided submissions to the Inquiry to obtain further information. The ACCC has also engaged in dialogue with art centre managers at a meeting organised by the Association of Northern, Kimberley and Arnhem Aboriginal Artists.

A further trip to Alice Springs has been organised with the objective of interviewing artists who may have suffered from unconscionable conduct. The ACCC is also monitoring the development of the National Indigenous Art Commercial Code of Conduct and associated Ethical Trading Strategies.

More details on the specific activities undertaken by the ACCC is set out below.

Review of the evidence provided in submissions and at hearings

Many of the submissions provided general comments on unethical conduct through references to "carpetbaggers". DesArt's submission (Submission 49) defined carpetbagger as "*...a pejorative term describing dealers involved in exploitation of Indigenous artists. The term Carpetbagger can be applied to certain dealers, backyard dealers, commercial gallery owners, private agents, or persons operating other legitimate businesses such as card yards or motels. Carpetbaggers in this sector are essentially non-Indigenous law breakers dealing in unconscionable conduct, duress and misrepresentation as defined by the Trade Practices Act.*" This definition highlights the broad range of individuals and businesses allegedly engaging in unconscionable conduct towards Indigenous artists. Other submissions alleged ex-police officers, nurses, doctors, teachers and other individuals with legitimate grounds for entering Indigenous communities were also engaging in unconscionable conduct in their dealings with Indigenous artists.

The types of allegations surrounding the conduct of "carpetbaggers" related to:

- Pressure to produce artwork within limited time frames, using poor quality materials, often working in sweatshop environments and without having regard

to the resultant quality of work or the impact that quality (or lack thereof) may have on the artist's reputation.

- Low remuneration (in the form of cash or other incentives including alcohol, drugs and second-hand cars).
- Targeting artists who are vulnerable due to age, language skills, substance dependency and/or cash flow problems and taking advantage of family and/or community obligations and/or the high profile of particular artists.
- Entrapping artists in cycles of debt away from their own communities and support networks.
- Unauthorised entry into permit areas to deal directly with artists.

Some of these allegations on their own may not amount to unconscionable conduct, however a combination of these factors, or one of these factors in combination with other circumstances not addressed expressly in submissions **may** amount to unconscionable conduct.

Most of the allegations in submissions were general in nature; understandably they did not specify conduct by particular individuals or businesses and were not sufficiently detailed in respect of specific events or conduct to enable the ACCC to identify particular cases which could be progressed towards enforcement before the Federal Court. Furthermore, there were very few details as to when the conduct occurred. Investigation of the more specific allegations did not identify evidence of ongoing conduct. In some cases the businesses allegedly involved have ceased to trade.

The evidence provided at the public hearings was also mostly generalised and lacked specific examples, although in some cases it amplified the allegations made in submissions. Essentially the same conduct as that mentioned above as stated in submissions was similarly raised in the hearings. The Committee may have heard more detailed and substantiated claims during in-camera sessions of the hearings. The ACCC is aware at least some of those who provided evidence in-camera are (understandably) still reluctant to provide detailed information to the ACCC, as they come from small communities and are concerned about ramifications for themselves and for the artists involved.

In order for the ACCC to identify and pursue conduct warranting enforcement action, it requires specific evidence of particular events, including artists being prepared to tell the story of their experience(s). Obtaining such evidence has its own special challenges. The ACCC recognises and appreciates it is not always easy in small communities to come forward with information. It is necessary for the ACCC to develop trust within Indigenous communities and the Indigenous Visual Arts and Craft Sector generally. These and other relevant issues to the ACCC's investigation process are discussed below.

Allegations relating to potentially misleading and deceptive conduct primarily concerned misrepresenting who actually painted the work and passing off non-Indigenous works as Indigenous. No specific instances of this conduct were identified, however the ACCC would welcome specific evidence of such conduct in order to

consider what action might be appropriate. Should any of the authors of submissions have specific examples of works that have been sold with misleading information as to the artist or origin the ACCC would be happy to assess the merits of any available evidence. The ACCC considers there to be significant harm to consumers, industry participants and the industry generally where misleading and deceptive conduct becomes rife, accordingly it is in the interests of those aware of such conduct to draw it to the attention of the ACCC. The nature of many of the allegations are such that in the absence of specific complaints to the ACCC it is unlikely to be aware of the conduct - that is the ACCC is unlikely to be able to identify artwork being passed off without assistance from knowledgeable industry participants.

ACCC investigative processes

The ACCC is of the view there are significant indicators of unconscionable conduct within the submissions and transcripts of the Inquiry, despite insufficient evidence of specific conduct, and to that end it has contacted several authors of submissions. Additional authors will be contacted in due course, with a view to obtaining more detailed information.

The ACCC's investigation to date has identified some scenarios of conduct it is concerned about, comprising of a number of the factors/incidents raised in various submissions to the Inquiry and it is currently working on strategies to identify and pursue specific instances of such conduct currently occurring. In order to avoid prejudicing such investigations the ACCC is unable to disclose more detailed information concerning the investigation at this time.

The Committee will be aware from the ACCC's earlier response providing information as to the number of complaints received concerning the Indigenous Visual Arts and Crafts Sector that despite the numerous general allegations presented to the Committee both by way of submissions and orally during hearings for the Inquiry, the ACCC had not received a corresponding number of complaints. There are likely to be a number of understandable and appreciable reasons for this, including: lack of knowledge about the role of the ACCC; concerns about possible ramifications within communities for those prepared to come forward; and recognition by some that there are sometimes other appropriate avenues for redress.

In the context of any ongoing investigation into alleged breaches of the TPA in the Indigenous Visual Arts and Crafts Sector, there are a number of factors which may hamper the investigation, including: the nature of the parties involved; the remoteness of potential witnesses; and the responsibilities and obligations on artists to their communities and families. Some of the factors that may make artists vulnerable to unconscionable conduct are also factors that can inhibit the ACCC's investigative process and any enforcement activity. The ACCC also notes comments from the submission of Professor Altman, Director of the Centre for Aboriginal Economic Policy Research (Submission 11) that "*Unfortunately, Indigenous artists may be reluctant to participate in prosecutions under the TPA if they have been complicit in*

unconscionable conduct, sometimes for very basic reasons like lacking access to banking facilities and needing to trade informally to gain access to cash.”

Importantly, though, such challenges are not necessarily fatal to an investigation and the ACCC is employing specific strategies to manage these hurdles appropriately to ensure effective investigation where significant indicators of unconscionable conduct have been or are subsequently identified in the Indigenous Visual Arts and Crafts Sector.

It is also apparent from reviewing the evidence provided to the Committee and subsequent discussions the ACCC has had with some industry participants that there remains little appreciation by many as to what specific conduct might fall within the scope of the unconscionable conduct provisions of the TPA, or what other avenues of assistance of which artists and art centres may be able to avail themselves. In addition, some artists may not be concerned about particular conduct (i.e. cash payments which are significantly less than the potential value of the artwork) for a variety of reasons, including: seeing painting for cash as a viable alternative to commission work as it assists their cash flow; lack of awareness or appreciation of their rights; and lack of awareness of the effects of poor quality work (due to either time pressures or quality of materials) on their reputation within the industry. Conversely, some artists feel shame at having been taken advantage of and shame at having cash flow difficulties. These issues sometimes mean it is less likely the ACCC will receive first hand evidence of the conduct. The ACCC is working with industry participants in an educative role to address these issues.

To effectively investigate and obtain sufficient evidence ACCC staff need to establish trusted relationships with artists and their supporting network of art centres and communities. Such relationships take time to build. In remote Indigenous communities there may be different perceptions, priorities and preoccupations to that of mainstream Australia including time, family obligations and community pressures. These differences can impact on the ability to locate specific artists at specific times. The situation is further complicated when coupled with language barriers (where English is the second, third or fourth language of an artist). Thus obtaining statements, while not insurmountable, will almost certainly be a time consuming task, as it is in many complex investigations.

Possible TPA Outcomes

The ACCC is seriously concerned about the nature of the allegations arising during the Inquiry and considers it likely (should sufficient evidence be identified) that such a matter would warrant litigation as the appropriate enforcement action. In the event the ACCC pursues litigation and succeeds at trial, the remedies available to the ACCC include: declarations the conduct is in breach of the Act; injunctions prohibiting certain conduct; and other orders including community service orders and probation orders. In certain circumstances, the ACCC may also take representative action on behalf of people who have suffered loss or damage as a result of unconscionable conduct.

Such orders may result in specific deterrence against the business subjected to ACCC enforcement action; however there are concerns whether general deterrence in this industry will be achieved. Having regard to the ease with which individuals and businesses can enter this industry in the form of dealers (low set up costs, absences of registration/association membership requirements, ability to sell over the internet), the removal of one “carpetbagger” may simply make way for another. Furthermore, for those dealers who have been in the industry a long time and are engaging in questionable conduct, the financial incentives of the industry mean significant pecuniary penalties would likely be needed to achieve general deterrence of these long-established dealers.

Successful ACCC action is likely to achieve a clear message that certain conduct is not only generally considered unacceptable, but is also a breach of the law. The resultant educative avenues arising from such a court outcome would include consumer, industry and indigenous community awareness.

That being said, ACCC enforcement action will not remove the variety of factors likely to make Indigenous artists vulnerable to unconscionable conduct: where that vulnerability exists, and there are financial rewards for those who take advantage of it, unconscionable conduct is likely to continue to occur, albeit by a different individual or business.

The ACCC considers other strategies need to be considered in conjunction with the ACCC’s enforcement and education roles in the Indigenous Visual Arts and Craft Sector to improve the sector’s practices, capacity and sustainability..

Other Relevant Issues and Alternative Strategies

The ACCC is of the view there are a range of factors likely to contribute to Indigenous artists’ vulnerability to unconscionable conduct. Some of these are industry-specific, whilst others are Indigenous-specific and have previously been found to have contributed to vulnerability by the court. These factors include:

- cash flow difficulties
- immediate financial needs for various reasons including food, accommodation, medical care, family obligations, supporting substance dependency of themselves or family members
- family obligations, including the responsibility of the primary bread winner (sometimes elderly artists) of a family to provide for extended family members
- limited English speaking and literacy skills of some artists
- artists out of their community have lack of support and access to advice on dealing with external parties
- lack of appreciation of true value of work
- disinclination/inexperience in negotiating terms
- non-confrontational nature

-
- failure to understand market effect, specifically the devaluation of reputable artists' names through "mass" production and poor quality materials or work
 - disparity in costs of goods and services, including high living costs in remote communities and disparity in charges for Indigenous and non-Indigenous guests of motels in major centres such as Alice Springs.

As noted above, enforcement activity by the ACCC alone will not address a significant number of these factors. Accordingly, the ACCC considers other strategies need to be considered to alleviate some of those factors which contribute to vulnerability. Those strategies might include education, resources and infrastructure in Indigenous communities as well as additional support for artists visiting major centres.

Some of the conduct highlighted to the Committee is also likely to fall within other agency jurisdictions such as the Northern Territory Police, State and Territory fair trading agencies and possibly the Australian Crime Commission. Further community and industry education on the roles of these and other government departments and agencies would help in empowering Indigenous communities and artists, enabling them to consider possible recourse or assistance options available to them in different circumstances.

The ACCC also welcomes the completion and subsequent implementation of the National Indigenous Art Commercial Code of Conduct and associated Ethical Trading Strategies (**the Code**). The Code is a joint initiative of the National Association for the Visual Arts (NAVA), DesArt and the Association of Northern, Kimberly and Arnhem Aboriginal Artists (ANKAAA).

The Code is an example of a range of initiatives currently being pursued by participants in the Indigenous Visual Arts and Craft Sector to enhance sustainability and improve market behaviour. The ACCC is generally supportive of industry based initiatives as they complement its compliance activities by providing a further mechanism to increase market integrity and thus reduce the instances of breaches of the law.

Conclusion

The ACCC remains concerned about possible indicators of unconscionable conduct in the Indigenous Visual Arts and Craft Sector and has investigations on foot to address these concerns. In addition, it remains vigilant and ready to pursue substantive allegations of any breaches of the TPA raised directly with it. However, having regard to its own review of the submissions and transcript and its subsequent discussions with industry participants, it considers any enforcement and compliance activities pursued by it will not completely resolve ongoing concerns about unscrupulous and unethical conduct in the industry. The ACCC recommends other strategies be supported and implemented with a view to long-term solutions, including empowerment and reduction in vulnerability.

Appendix 5

Resale royalties – outcomes for Indigenous artists

This appendix details the outcomes for Indigenous artists in terms of economic benefits they would receive from a resale royalty.

- **Sliding scale on sales from \$8000** – of 67 artists sharing in royalties of \$217 500 in the 2003 art auction sales, \$112 000 (or 51 per cent) would go to the estates of five deceased artists. The remaining \$106 000 would be divided amongst 62 artists, with an average royalty payment of \$1700.
- **Sliding scale on sales from \$5000** – of 97 artists sharing in royalties of \$236 000, \$106 000 (or 45 per cent) would go to the estates of four deceased artists. The remaining \$130 000 would be divided amongst 93 artists, with an average royalty payment of \$1400.
- **Sliding scale on sales from \$1000** – 218 artists would share in \$257 000, or 15 per cent of total royalties payable. The majority of these artists, or their estates (72 per cent) would receive payments of less than \$500.
- **Sliding scale on all resales** – 237 artists would receive royalties (19 more than under the \$1000 threshold model). The families/communities of four deceased artists would receive 41 per cent of the total royalties available.
- **Five per cent on sales from \$8000** – of 67 artists sharing in royalties of \$339 000, 55 per cent would be shared between the families/communities of five deceased artists. The average royalty payment to the remaining 62 artists would be \$2460.
- **Five per cent on sales from \$5000** – of 97 artists sharing in royalties of \$362 000, no living Indigenous artists would receive payment in the first and second payment ranges. The highest-selling living Indigenous artist would receive \$10 400.
- **Five per cent on sales from \$1000** – of 218 artists receiving royalties the average royalty payment would be \$1800. Of these artists, 21 per cent would receive less than \$100.
- **Five per cent on all resales** – of 237 artists sharing in royalties of \$392 000, no living Indigenous artists would receive payments in the first, second and third payment ranges. The estates of five deceased Indigenous artists would receive 49 per cent of the total royalties to Indigenous artists. The remaining \$200 000 would be divided between 232 artists, with an average royalty payment of \$865.
- **Portion-based sliding scale on sales from \$5000** – of 97 artists sharing in royalties of \$259 000, no living Indigenous artists would receive payments in the first, second and third payment ranges. The estates of five deceased

Indigenous artists would receive 49 per cent of the total royalties to Indigenous artists. The remaining \$131 000 would be divided between 92 artists, with an average royalty payment of \$1424.

- **Living artists only – sliding scale on sales from \$5000** – the 50 living artists would receive benefits ranging from \$165 to \$5000.

Source: DCITA, *Proposed Resale Royalty Arrangement: Discussion Paper*, 2004, Appendix B.

Appendix 6

Resale royalty arrangements – major proposals

Listed below are major proposals submitted to DCITA as part of the department's consideration of a resale royalty scheme in Australia in 2004.

The Australia Council

The Australia Council supported a model that incorporated the following features:

- a minimum price threshold of \$3000;
- a sliding scale that starts at 5 per cent and trends down to one per cent;
- coverage of all sales through professional intermediaries;
- administration by a copyright collecting society; and
- supervision by the Copyright Tribunal.¹

NAVA

NAVA proposed the following arrangement:

- the scheme should apply to all Australian artistic works which are resold in Australia or overseas in countries with comparable schemes;
- the duration of the scheme should be tied to copyright arrangements – that is, the life of the artist plus 70 years;
- the level of the threshold should be set by the copyright collecting society (which would be appointed by the Attorney General); and
- the royalty should be a flat rate of 5 per cent.²

Viscopy

Viscopy proposed that:

- all artistic works currently in the period of copyright should be covered;
- the duration should exist for the same period as other forms of copyright, that is 70 years;

1 The Australia Council, *Submission 9* to DCITA inquiry, p. 1.

2 NAVA, *Submission 23* to DCITA inquiry, pp 8–12.

- an appropriate threshold would be between \$1000 and \$3000; and
- the royalty should be a flat rate of 5 per cent.³

Desart

Desart proposed the following arrangements:

- a minimum threshold of \$5000;
- a sliding scale stating at 2.5 per cent for the portion of the sale price up to \$200 000; 0.75 per cent for the portion of the sale price up to \$500 000 and 0.25 per cent exceeding \$500 000;
- the scheme should cover all works of fine art, craft and sculpture;
- a collecting agency should be established; and
- the duration of arrangements should be in line with copyright arrangements.⁴

3 Viscopy, *Submission 32* to DCITA inquiry, pp 7–9.

4 Desart, *Submission 14* to DCITA inquiry, pp 2–3.

Appendix 7

Example of an art centre's certificate of provenance

Warlukurlangu Artists Aboriginal Association



LPO Yuendumu
via Alice Springs NT 0872
Australia
Phone: +61 8 8956 4133
Fax: +61 8 8956 4003
E: info@warlu.com
www.warlu.com



Artist Judy Napangardi Watson
Skin Name Napangardi
Jukurrpa Mina Mina Jukurrpa (Mina Mina Dreaming) - Ngalyipi

Catalogue # 1281/07
Canvas Size 61 x 30 cm

Story

The country associated with this Jukurrpa is Mina Mina, a place far to the west of Yuendumu, which is significant to Napangardi and Napanangka women, the custodians of the Jukurrpa that created the area. The Jukurrpa story tells of the journey of a group of women of all ages who travelled to the east gathering food, collecting Ngalyipi (*Tinospora smilacina* or snake vine) and performing ceremonies as they travelled. The women began their journey at Mina Mina where Karla-ngu (digging sticks) emerged from the ground. Taking these implements the women travelled east creating Janyinki and other sites. Their journey took them far to the east beyond the boundaries of Warlpiri country. The Ngalyipi vine grows up the trunks and limbs of the Kurrkara (Desert Oak, *Allocasuarina decaisneana*) trees. Ngalyipi is a vine sacred to Napangardi and Napanangka women and has many uses, including as a ceremonial wrap, as a strap to carry Parrajas (wooden bowls) laden with bush tucker and as a tourniquet for headaches.



Authenticated By:

Date: 19/06/2007