

# 'INDIGENOUS ART - SECURING THE FUTURE': AUSTRALIA'S INDIGENOUS VISUAL ARTS AND CRAFT SECTOR

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Senate Standing Committee on Environment, Communications, Information Technology and the Arts  
Completed June 2007

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On 15 August 2006 the Senate directed the Senate Standing Committee on Environment, Communications, Information Technology and the Arts ('the Committee') to conduct an inquiry into the Indigenous visual arts and craft sector. This inquiry was prompted by significant concern regarding the commercial sustainability of the sector, which is undergoing rapid expansion both in terms of artist numbers and market demand, and which is also subject to recurring allegations of unethical business practices. The Committee was asked to analyse the scale of the sector, to suggest ways in which to improve its operational capacity and to identify opportunities for the alteration of existing government and industry support programs so as to more effectively cater to the sector's needs.

## Key Findings

### Current size of the Indigenous visual arts and craft sector

The Committee received a range of submissions detailing the size and scale of the Indigenous arts and craft industry, with various statistical analyses of the growth of the retail market, commercial art gallery sales of Indigenous art, participation by Aboriginal and Torres Strait Islanders in arts and culture, and the number of Indigenous artists earning a living from art. The Committee concluded that while it was difficult to ascertain the true size of the sector, it has undergone rapid annual growth over the last decade. An accurate estimate is complicated by factors such as the large number of independent sales made by individual artists and the growing number of sales taking place on the internet. The Committee also found that the increase in the value of the sector did not create a corresponding increase in the number of artists, meaning that either certain artists were receiving more money for their work, or that a significant proportion

of the market value was being captured by participants other than the artists themselves.

### Economic, cultural and social benefits

The Committee identified a range of social, health, educational, cultural and economic benefits for Indigenous Australians arising directly and indirectly from the visual arts and craft sector. These benefits include: the use of art as a means of transmitting Indigenous culture; the contribution of art to the generation of positive health outcomes; and financial returns to individual artists and the distribution of artists' income amongst their community. The Committee stated that in remote communities, income derived from the sale of art is often the only source of non-government income. Other benefits include: economic boosts to the States and Territories, particularly the Northern Territory; increased domestic and inbound tourism; and natural and cultural resource management activities generating biodiversity. However, the Committee found that the success of Indigenous arts did not necessarily mean major economic benefits or better living standards for many Indigenous artists.

### Infrastructure, training and funding needs of sector

Identifying the important role played by art centres as both agents for Indigenous artists and as cultivators of Indigenous culture, the Committee also drew attention to the limitations of those centres. In particular, the Committee highlighted the high turnover of art centre staff due to factors including lack of funding, inadequate commercial training and infrastructure deficiencies (such as an absence of staff accommodation in remote locations). They found that further education was needed for art centre staff (such as fundamental business and bookkeeping skills), for artists (particularly regarding their legal rights in respect of their work) and for consumers

(concerning the authenticity and value of the artwork they purchase).

In addition, the Committee discussed existing sources of funding, including the Aboriginal Benefits Account, the National Arts and Crafts Industry Support program, and the Indigenous Culture Support program. It found that in many cases the existing budgets of these and other government and industry funding programs were not keeping pace with the expansion of the sector. The Committee considered submissions on the introduction of a resale royalty scheme, but found that Indigenous artists were unlikely to benefit significantly from such a scheme under the models proposed.

### Threats to sector and existing protection

Two major areas of concern identified by the Committee were the questionable integrity of the works being sold and the exploitative conditions under which they were being produced. In assessing means by which to counter these factors, the Committee highlighted the absence of a national authenticity scheme and discussed the opportunity that this absence created for so called 'carpetbaggers', exploitative buyers, dealers or agents, to take advantage of Indigenous artists. While discussing some existing protective legislation, including sections 51AA, 51AC and 52 of the *Trade Practices Act 1974* (Cth) and the intellectual property protection offered under the *Copyright Act 1968* (Cth) ('*Copyright Act*'), the Committee found that these pieces of legislation frequently failed to address the circumstances of Indigenous artists. In particular, the requirement under the *Copyright Act* that a work be original, in material form and attributable to an identifiable author in order for copyright to exist leaves many examples of Indigenous artistic work unable to claim copyright.

As an alternative to this, the Committee identified a need for tailored intellectual property protection, which included reference to Indigenous communal moral rights. Submissions received proposed a number of mechanisms to combat the problems, including: introducing new laws or frameworks for regulation; better enforcement of existing laws; methods to guarantee the provenance of works; better education for artists and consumers; and strengthening the permit system for access to Indigenous communities. The Committee briefly discussed the effect of the permit system upon the art sector and the impact of a 2006 Commonwealth Government

proposal to abolish the system (since overshadowed by the *Northern Territory National Emergency Response Act 2007* (Cth)). It found that while the submissions it received were overwhelmingly in support of the system's retention and while the importance of traditional land to Indigenous communities is unquestionable, the evidence was inconclusive as to whether the permit system actually prohibits carpetbaggers from exploiting artists. The Committee also examined the concept of a resale royalty scheme, considering many submissions and international models, but found that such a scheme would not provide significant financial benefits for the majority of Indigenous artists.

### Future opportunities for further sector growth

The Committee found that the future of the Indigenous art market was primarily dependent upon the development of two areas – tourism within Australia and the international export market. To facilitate the expansion of the former, the Committee found that further consumer education was required, and that the sector needed to overcome the seasonal nature of the tourist market. In regard to the international Indigenous art market, the Committee highlighted the lack of available data concerning the international sales of Australian Indigenous art, and found that there was insufficient funding available to encourage the development of this market through ventures such as overseas exhibitions.

### Key Recommendations

- The establishment, by the Commonwealth, of a \$25 million infrastructure fund for the purpose of assisting Indigenous visual arts and craft.
- The Department of Communications, Information Technology and the Arts ('DCITA') should discuss the possible introduction of courses on art centre management with various tertiary institutions.
- The DCITA should develop training programs in relation to governance and business planning, artists' rights and responsibilities, artists' artistic development, and consumer education.
- The Indigenous Art Commercial Code of Conduct should be completed as soon as possible and, upon completion, all government and industry agencies and collectors apply this Code of Conduct.
- The funding of the ACCC ought to be increased with a view to securing a higher rate of prosecution of illegal practices within the industry.

- The DCITA should analyse the failure of the (now defunct) National Indigenous Arts Advocacy Association label of authenticity and, in consultation with key stakeholders, initiate the planning process for a new national authenticity scheme.
- The Government ought to introduce revised legislation incorporating Indigenous communal moral rights to provide for the protection of Indigenous cultural and property rights.
- A resale royalty scheme ought not be introduced at this time.
- The Commonwealth should increase its support for the international promotion of Indigenous visual arts and craft.

*The full text of this report is available at the Parliament of Australia's Senate website: <[http://www.aph.gov.au/Senate/committee/ecita\\_ctte/indigenous\\_arts/report/report.pdf](http://www.aph.gov.au/Senate/committee/ecita_ctte/indigenous_arts/report/report.pdf)>.*