

VALUING ART,
RESPECTING
CULTURE



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Web links to many Indigenous artists, support organisations and retail outlets can be accessed via the Visual Arts Net website. In addition, the Executive Summaries of Valuing Art, Respecting Culture can be downloaded from the site. **Site address** www.visualarts.net.au



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Cover image ©Brian Nyinawanga "Visions of the City" 1994. Screenprint. Image courtesy of the Museum and Art Gallery of the Northern Territory.
"When Brian Nyinawanga visited Sydney, it was the first major city he had seen apart from Darwin. It made a significant impression upon him, particularly the claustrophobic streets with their tall buildings, depicted here in classic plan perspective. In the middle is Centrepoint Tower. Illustrated on the right are scenes that he witnessed: mechanics mending motor cars (top left), people strolling through Hyde Park (centre right), visitors to the Art Gallery of New South Wales (below) and finally, the domestic airport."
Margie West

PROTOCOLS FOR
WORKING WITH THE
AUSTRALIAN INDIGENOUS
VISUAL ARTS AND
CRAFT SECTOR

valuing art, respecting culture

General Editor and Principal Consultant Doreen Mellor
Authors Doreen Mellor and Terri Janke

This document was commissioned by the National Association for the Visual Arts (NAVA).

It was funded by the Aboriginal and Torres Strait Islander Commission (ATSIC); the Commonwealth Government through the Australia Council's Aboriginal and Torres Strait Islander Arts Board; and the Northern Territory Government's Department of Arts and Museums.

"I'm glad I became an artist... I can express what I want to say to people. It seems to me my fingers do my talking. Before, we'd be sitting down talking and I'd go to say something, and someone else would cut in. So I'd get wild and not talk any more. But if someone comes in and sees my art, they'd see straight away what I was trying to say, they'd understand. I paint about my life, my family, the aunties and uncles that I grew up with. My art is mainly to tell my kids what I went through when I was a young fella."

Ian Abdulla, Barmera SA¹

"The last section between the tail and head with the tight spiral represents the old culture of our people that is emotionally centred in every person in the straits – a strength of culture. The mid-section with the warrior image represents the Torres Strait people on the mainland who grow up without their culture. The young warrior in my print is waking up to realise that he must re-find his culture symbolised in the designs all around him."

Laurie Nona, Torres Strait Qld²

"This is my country. There is one very big cave in a big hill. This is a good cave for the wet time. It is very dry and there are no ticks inside the cave. This is where we camped in the wet time. There are small birds which live in this place. In the Dreamtime they got up from the water here. They belong in this place, they live in the living water. They are very tiny rain birds called kitirr. They are clean, shiny birds because they come from inside that water. You can see these birds inside the cave. They come in the rain time when there are clouds."

Boxer Yankarr, Fitzroy Crossing WA³

¹ cited in Felicity Wright, *Can art make people (feel) well?* in Artlink Vol 20 #1, 2000, p 43

² *Telstra presents the 15th National Aboriginal and Torres Strait Islander Art Award 1998*, Museum and Art Gallery of the Northern Territory, exhib.cat., 1998, p 57

³ Mangkaja Arts Resource Agency, *Karrayili*, exhib.cat. Tandanya National Aboriginal Cultural Institute, 1991 p 26

VALUING ART, RESPECTING CULTURE:
PROTOCOLS FOR WORKING WITH
THE AUSTRALIAN INDIGENOUS
VISUAL ARTS AND CRAFT SECTOR

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Doreen Mellor is an Indigenous Australian, currently managing the Bringing Them Home Oral History Project at the National Library of Australia and is the immediate past director of Flinders University Art Museum in Adelaide. For four years visual arts manager and curator at the National Aboriginal Cultural Institute - Tandanya, she has prepared major reports on Indigenous arts and cultural issues at national, state and community levels. She has served on many national and state boards and committees, including those of the National Association for the Visual Arts (NAVA), the Australian National Committee of the International Council for Cross Cultural Research at ANU, and the board of the Art Gallery of South Australia.

Terri Janke is the principal solicitor of Terri Janke & Company, Lawyers and Consultants. The practice provides legal and management solutions in the Indigenous entertainment, cultural heritage and media arena. In 2000, Terri was commissioned by the World Intellectual Property Organisation to undertake a study on the matters in Australia where Indigenous people have used intellectual property laws to protect their Indigenous Cultural and Intellectual Property. The Study will be published in October 2001. In 1999, as part of her role as consultant to the Indigenous Cultural and Intellectual Property Project, Terri wrote the report: *Our Culture: Our Future - Report on Indigenous Australian Intellectual and Cultural Property Rights*.

VALUING ART, RESPECTING CULTURE:
PROTOCOLS FOR WORKING WITH
THE AUSTRALIAN INDIGENOUS
VISUAL ARTS AND CRAFT SECTOR

Introduction

SCOPE

This protocols document, Valuing Art, Respecting Culture, continues on from the positive work undertaken by so many individuals and organisations, in providing a guide for appropriate ways to work with Indigenous Australians, in this instance, with visual artists and visual arts organisations. Given the integrated nature of Aboriginal and Torres Strait Islander cultures, the visual arts are closely related to other artforms and activities, and are frequently unable to be isolated from other functions of the community. Thus, a broad understanding of the cultures of Indigenous Australia will always assist, when approaching collaborations or business dealings within the Indigenous visual arts sector. PART 1 of Valuing Art, Respecting Culture provides a brief overview of Aboriginal and Torres Strait Islander cultural environments in Australia, and comments on the development of the Indigenous visual arts sector over the past few decades. Protocols guidelines are provided in PART 2.

PART 3 comprises a section on legal issues for the visual arts sector. Australian law does not always cover matters of concern within Indigenous Law, nor does it always make provision for ethical and responsible ways of dealing with Indigenous cultural matters. Where possible, the legal section and the general section of this protocols document attempt to indicate how to approach such matters responsively. While the document endeavours to cover many areas of activity within the visual arts, it is not possible to answer every question the reader might have, or to provide prescriptive answers. Indigenous cultures

and communities in Australia are diverse, as are the life circumstances of Indigenous individuals. Nevertheless, where there is no specific answer or indication, approaches and directions will be found, which may translate into other contexts or more specific situations.

TERMS

In this document:

- the term 'visual arts' includes 'artistic works' as referred to in the Copyright Act 1968, encompassing all visual art forms, including craft and multimedia practice, painting, sculpture, drawing, printmaking and photography;
- the term 'Indigenous' refers to Aboriginal and Torres Strait Islander people. Aboriginal people are the original owners and inhabitants of the Australian mainland, various small islands and Tasmania, their custodial relationship with the land extending over many tens of thousands of years. Torres Strait Islander people are the longstanding inhabitants and traditional owners of the islands of the Torres Strait - a stretch of water between the northern tip of Cape York in Queensland, and Papua New Guinea.

BACKGROUND

The art of Indigenous Australia has become an important element of the Australian arts environment. Visual art forms continue to play a leading role, providing a visible Indigenous presence in many and diverse contexts.

As Indigenous involvement in the visual arts sector expands, addressing cultural exchange and diversity of approach becomes more challenging.

From their earliest involvement in mainstream art environments, Indigenous artists and organisations have adapted to working with different value systems and approaches to art and they continue to do so. Conversely, with increasing acceptance of the significance of Indigenous art movements, the visual arts sector in Australia has attempted to come to grips with the way Aboriginal and Torres Strait Islander value systems operate. Failures in this process have ranged from blatant infractions of copyright to instances of thoughtless insensitivity, but there have also been many examples of fair dealings between Indigenous and non-Indigenous participants in the visual arts sector.

NAVA, the National Association for the Visual Arts, has been active in supporting Indigenous visual arts, and through producing this protocols document, Valuing Art, Respecting Culture, continues to contribute to its development as part of Australian contemporary art activity.

Appropriate ways of working within the Indigenous sector are indicated in the protocol and legal sections of this document. Other sections of the document provide background information and an historical and cultural context for contemporary Indigenous visual arts practice in Australia.

BENEFITS

Making customs, values and cultural principles known to those outside a cultural community benefits that community in many ways. Indigenous protocols for the visual arts sector have the potential to contribute significantly to the general wellbeing of Indigenous communities, and may be of benefit to other communities in Australia in a variety of ways, including those outlined below:

- the publication of protocols means that the basis for a constructive means of communication - the first step in amicable relations between cultural groups - is able to be established;
- protocols provide a point of reference for those wishing to engage in cross-cultural transactions in an appropriate way, and a reminder of the responsibilities involved in working with other cultures;
- protocols provide a focussed body of information for those who wish to comply with and adhere to the cultural conventions of another group;
- protocols assist in the process of scrutinising cross-cultural transactions, and even if there is no means by which those transactions may be regulated, protocols may act as a deterrent for inappropriate behaviours;
- much guesswork and hearsay about how to work with or approach Indigenous communities in relation to the visual arts can be eliminated through the provision of a set of protocols. Protocols provide a focussed perspective on the sector and issues within it;
- protocols provide moral support and back-up for appropriate positions taken by individuals and organisations within the sector, and also within communities and work environments;
- a benchmark is established, from which further research and assessment of protocol positions can take place;
- Indigenous protocols provide a counterbalance for the prevalence of settler protocols and cultural principles in Australia; and
- the existence of guidelines or protocols provides a perspective on the activities of various players within the sector, making it clear which individuals and organisations are working positively to support the sector.

TARGET AUDIENCE AND USAGE

This protocols document, Valuing Art, Respecting Culture, has been prepared for use by anyone dealing with, or working within the Indigenous visual arts sector, and for those who wish to learn more about it, or how to interface with it.

Those who are already familiar with the sector and have had many years experience working with Indigenous artists and communities may find it useful as a support for their own work and positions on the guidelines and information provided. As curators of Indigenous art in museums and galleries, specialist researchers and academics active in this area, and others involved closely with the sector, these people are already well informed and have contributed much to the development of the sector. Valuing Art, Respecting Culture may assist in transferring some of their knowledge and experience to others, and may be relevant for any of the individuals or groups listed below:

- artists - of all descriptions, but especially Indigenous artists (this document helps to define their rights);
- art auction houses;
- commercial galleries;
- overseas galleries;
- retail outlets;
- buyers and collectors of Indigenous art;
- tourists - both local and international;
- educational institutions;
- researchers and academics;
- government agencies - local, state and commonwealth;
- cultural institutions - staff and senior management;
- curators and other museum professionals in regional and state museums or working freelance;
- guides, cultural workers in the tourism industry;
- museum volunteers in regional and state museums;
- art workers; and
- broadcast and print media.

Executive Summary

The information in Valuing Art, Respecting Culture is organised into three main sections.

PART 1 provides a framework for understanding Indigenous cultures in Australia, and their connection with the visual arts environment. PART 2 contains protocol guidelines and information for dealing with the Indigenous visual arts sector. PART 3 concerns Indigenous visual arts and the law and consists of a legal information section describing the legalities of the Indigenous visual arts. These three sections are summarised below, keeping to the format established in the full document.

Further information is contained in the various lists and appendices.

PART 1: The Indigenous arts environment

1 Indigenous cultures in Australia

Indigenous Australian cultures include both Aboriginal and Torres Strait Islander cultures, involving many languages and a diverse group of cultural protocols. Both land and

sea territories have profound spiritual and cultural significance to all Australian Indigenous Peoples, including those who now live in urban environments.

2 Indigenous identity

Contemporary Indigenous identity has been influenced by contact with settler cultures. Disruptive factors for Indigenous societies were: the incidental loss of food sources as land was cleared; the introduction of diseases to which Aboriginal people had no immunity; and the various recorded instances of poisonous substances being deliberately introduced into food and water sources.

Numbers of Indigenous Peoples were forcibly moved from their traditional lands, and confined in government settlements or missions run by religious groups. Deliberate separation of Indigenous children from their families was an extension of this practice, refer to 12.1 for criteria.

3 Reconciliation, reclamation and renewal

The rights of Indigenous Australians have increasingly been recognised, and in 1991 the Commonwealth government established the Council for Aboriginal Reconciliation. Native title has been legitimated through High Court rulings and legislation, and artists have become involved in dialogue and discussion surrounding land claim issues, as well as using the resources of institutions such as museums to retrieve cultural links.

4 The Indigenous arts and development within non-Indigenous frameworks

Indigenous languages in Australia do not have a directly translatable term for the word 'art', although art is an integral part of life and community activity. Art has become part of the land claim process, often used to demonstrate ceremonial links to land. In urban communities art expresses Indigenous identity, and addresses many socio-political issues. Urban, rural and remote artists working through commercial galleries, art and craft centres or cooperatives are part of the wide-ranging profile of contemporary Indigenous art in Australia.

5 Support structures

Frameworks for supporting Indigenous artists and art practice vary. The most cohesive support network is provided by remote community-based art and craft centres, funded for the most part by ATSIC (the Aboriginal and Torres Strait Islander Commission). Other centres have been established in regional and urban areas. Funding support is devolved through a number of agencies, the most important for the arts being the Aboriginal and Torres Strait Islander Arts Board of the Australia Council. Other organisations which support arts and cultural activities, are ATSIC, the federal Department of Communications, Information Technology and the Arts, and state arts ministries.

Various opportunities for income generation through marketing art works exist within the Australian arts environment, and include:

- commercial galleries;
- retail outlets;
- public galleries and museums; and
- Indigenous cultural centres.

6 Visual arts and cultural organisations in the wider community

This section provides a brief overview of the types of public institutions where collections of Indigenous art reside, or where exhibitions of Indigenous art might be shown. Museums, galleries and other cultural and arts organisations fall into this category.

6.1 Natural history museums

Natural history museums have collected the material culture of Australia's Indigenous Peoples ever since first contact. In contemporary museum environments, there is a far greater awareness of the value of the cultural material held.

6.2 Specialist museums

Specialist museums vary in size and nature. They may be national institutions, such as the Maritime Museum in Sydney; or state-based museums, such as the Maritime Museum at Port Adelaide in South Australia.

6.3 Indigenous Peoples and museums

Small museums are often part of, or serve, Indigenous communities. Some remote community-based art and craft centres also have museums attached to their retail operations. There are many examples of community museums, from Yarrabah in North Queensland, to Ngui on Bathurst Island in the Northern Territory, or the museum at Camp Coorong in South Australia.

6.4 Art museums and public galleries

Like other museums, art museums can be large or small, national, state or regional in focus, and may have collections of Indigenous visual art. The national and state art galleries are art museums, the usual defining feature of an art museum being the collections of visual art held within the institution.

7 Cultural protocol documents

A number of protocol documents have been produced in recent years, to meet the needs of particular communities, organisations, sectors or situations. Five of these documents have been reviewed, including:

- Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property Rights, 1998, written and researched by Terri Janke of Michael Frankel & Company, Solicitors, for the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), and the Aboriginal and Torres Strait Islander Commission (ATSIC);

- mina mir lo ilan man - proper communication with Torres Strait Islander people, produced in conjunction with protocols for consultation and negotiation with Aboriginal people by the Queensland government, Department of Aboriginal and Torres Strait Islander Policy and Development, 1998;
- Taking the Time - museums and galleries, cultural protocols and communities, A Resource Guide, 1998, produced by Museums Australia Inc. (Qld);
- Previous Possessions, New Obligations, a policy document produced by Museums Australia in 1994 (followed by a plain English version, with case studies) to provide a way for museums to approach Indigenous cultures; and
- Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services, compiled by Alex Byrne, Alana Garwood, Heather Moorcroft and Alan Barries, and endorsed at the Aboriginal and Torres Strait Islander Library and Information Resources Network (ATSILIRN) conferences, in December 1994 and September 1995.

PART 2: Protocols: Australian Indigenous art and artists

8 Principles

Principles underlying Indigenous protocols in the Indigenous visual arts sector are:

- respect for the values of Indigenous Peoples;
- control of Indigenous cultural heritage;
- protection of Indigenous intellectual property; and
- government support for maintenance of cultural heritage.

9 A framework for protocols

Customs and protocols vary widely across the many and diverse communities of Indigenous Peoples throughout Australia, however fundamental frameworks can be outlined and may include:

- writing and speaking about Indigenous cultures in a manner preferred by those cultures, and avoiding the use of derogatory or outdated terms;

- accepting the diversity of Indigenous experience and cultural context;
- referring to Indigenous cultures as living and evolving entities, not historical phenomena; and
- acknowledging the Indigenous custodians of country.

10 Communication, consultation & consent

Proper consultation is important in planning any activity involving another cultural group.

10.1 Consultation

Communication is most effective if each group:

- is aware of the way in which their own culture affects how they see an issue;
- endeavours to understand, and builds awareness of the other culture;
- patiently unravels misunderstandings which arise out of cultural differences; and
- finds the right people within a community to speak to.

Within Indigenous communities, gender divisions of responsibility and knowledge are important. Consultation and communication processes are different for each community, and Aboriginal communities have different cultural approaches from Torres Strait Islander communities.

10.2 Consent

Community consultation establishes the Indigenous cultural perspective, and it is important to accept that it is this perspective which should determine the appropriateness of a course of action which might affect an Indigenous community or group. Consent is required, and it is important to:

- allow time for a decision to be made;
- remember that decisions will be made according to internal community needs;
- be prepared to take 'no' for an answer; and
- respect the views of all factions within a community.

10.3 Visiting communities

Trust is established through personal links as well as in the way work is carried out in a community. Formal permission is required for travel to many communities. In the visual arts sector, it is advisable to contact the local Art and Craft Centre for assistance.

People living in remote area communities have busy lives of their own and observers and visitors can be an imposition. Importantly:

- avoid visiting at times of the year when ceremonial activity is likely to be in progress;
- avoid visiting when responsive ceremonial activity, such as a funeral, is taking place; and
- remember that ceremony is not leisure time activity for Indigenous Peoples.

11 Works of art

Art works may be loaned, commissioned or purchased for:

- exhibitions;
- private or public collections;
- resale in a commercial outlet;
- gifts by private individuals; and
- festival activities.

11.1 Purchasing Indigenous art works

Purchasing directly from Indigenous art and craft centres ensures authenticity and supports the community and the artists. In most cases, bypassing art and craft centres is an unacceptable practice.

Purchases may be made from reputable dealers and galleries around Australia, many of whom are members of industry associations such as:

- the Australian Commercial Galleries Association;
- the Indigenous Art Trade Association.

Mass produced items rarely benefit Indigenous artists. The Label of Authenticity, initiated by the National Indigenous Arts Advocacy Association (NIAAA), or other region-specific authenticity labels will assist in responsible purchasing.

11.2 Indigenous art works in exhibitions

Works for exhibition may be obtained from:

- art and craft centres and cooperatives;
- commercial galleries;
- public or private collections; and
- the artists themselves.

Permission is required from the artist concerned, if catalogues, invitations, reviews or promotional articles carry images of artwork from an exhibition featuring the artist's work.

11.3 Reproducing Indigenous images and designs

Changes in technology have made it simpler to reproduce images, designs and visual symbols. However, the use of Indigenous designs or their close equivalent without permission, is not acceptable. Further detail on intellectual property rights can be found in section 3.

For permission to publish designs or images, contact a copyright society such as Viscopy or the artist, agent, gallery or art and craft centre. **NOTE:** secondary reproduction fees owed to the copyright holder (usually the creator) cannot be accessed except by members of a collection society, so all visual artists would be well advised to join one. Viscopy is a collection society established to serve the visual arts.

CASE STUDY 1: Making didgeridoos c.1999

12 Artists: approaches to working with Indigenous artists

12.1 Who are Indigenous artists?

The questions continue to be asked - what is Indigenous art? Who are Indigenous artists?

The answers are complex yet simple.

Artwork which is produced by an Indigenous person is Indigenous art. The content encompasses the reflections and life experience of the particular person - the search for cultural identity; a political stance; or a requirement to reflect ceremonial responsibilities in the work produced.

There is debate however, about the use by urban-based and regional/rural-based artists, of designs and symbols which evoke Aboriginality, in order to make a statement about cultural identity. There is a fine line between such exploration, and the appropriation of others' identity and culture.

challenging identity

How should a challenge to an artist's Indigeneity be handled? The ATSI definition of Aboriginality requires:

- the person to identify as an Aboriginal;
- that the person is of Aboriginal descent; and that
- the community of origin or the community in which he/she resides accepts the person as Aboriginal

Organisations dealing with a challenge to an artist's Aboriginality, will be required to ask the artist in question to provide evidence that he/she meets these three conditions.

working with Indigenous artists

Non-Indigenous and Indigenous artists, art workers or other interested parties may wish to:

- collaborate with an Indigenous artist;
- include works by an Indigenous artist in an exhibition;
- generate an exhibition of work by an Indigenous artist or group of artists;
- include an image of a work by an Indigenous artist in a publication;
- include an Indigenous artist as a speaker on a panel;
- invite an Indigenous artist to address an interest group or students;
- involve an Indigenous artist as a speaker in a professional development program; or
- interview an Indigenous artist as part of research or journalistic activity.

12.2 Collaborating with Indigenous artists

Artists may be contacted through various agencies - through art and craft centres, or the galleries which represent them. An approach to an artist in regard to collaboration may be met with enthusiasm or lack of interest - as with any artist, the response will depend on the individual concerned.

Contacting Indigenous artists

Contact with the artist may not need to be arranged through an agency such as an art and craft centre if a personal relationship with an artist or group of artists already exists. However, the agreement or understanding entered into with the particular artist/s does not necessarily extend to other artists or communities.

CASE STUDY 2: Collaboration c.1994

12.3 Inviting Indigenous artists to exhibit

Art and craft centres or galleries may facilitate contact with an artist or assist with selection of an appropriate artist. Prior background research will ensure the approach is made to an appropriate artist or centre, and that the process of collating information does not involve the resources of the artist or the centre unnecessarily. The payment of exhibition or artist loan fees is a recognition of an artist's potential loss of income while work is on exhibition in a non-selling context, and should be a separate payment from artist's fees (for time spent creating a work), travel per diem and payments to cover material costs. The National Association for the Visual Arts (NAVA) publishes guidelines on fees for artists and art workers.

12.4 Indigenous artists as public speakers

There are various ways to locate an artist to address an audience or lead a workshop. The provision of transport, childcare and other services, which will facilitate the process, should be taken into account.

12.5 Interviewing Indigenous artists

Artists may be interviewed:

- as part of preparatory research for exhibitions;
- as part of academic research; or
- for journalistic purposes in a media setting.

Ethical approaches to research are necessary. Some background information should be gained before interviewing takes place.

CASE STUDY 3: Background briefing c.1997

13 Artists' voices

Indigenous artists from different parts of the country and working in diverse situations have been asked to put their thoughts about protocol issues on record. The artists are:

13.1 Julie Dowling (WA);

13.2 Banduk Marika (NT); and

13.3 Clinton Nain (VIC).

14 Exhibitions: the display of Indigenous works of art

14.1 Presenting exhibitions of Indigenous works of art

cultural implications

Cultural implications should be considered, before artists are approached, or purchase/loan of art works arranged. If artists are present at an exhibition, it is courteous to acknowledge them publicly, and to offer hospitality and support.

CASE STUDY 4: Exhibition: a case study c.1999

14.2 Curating exhibitions of Indigenous art

Indigenous curatorial input

It is important to involve an Indigenous curator, consultant or reference group in curatorial work. Indigenous curators, or other people involved in the arts can be contacted through State arts ministries, art and craft centres, or through Rachel and Hope Perkins' The Black Book - Indigenous Arts & Media Directory.

14.3 Viewing exhibitions of Indigenous art

Indigenous involvement in making exhibitions accessible

Seek assistance from Indigenous artists, curators or educators to make exhibitions of Indigenous art accessible to viewing audiences.

accessibility means access for Indigenous Peoples also

Aboriginal and Torres Strait Islander Peoples should feel welcome in galleries and resource centres, and this includes providing a relaxed environment, approachable staff and where possible, the presence of Indigenous staff members.

talking about art in exhibitions

Educators and guides in art museums require cultural awareness training sessions by Indigenous people, and an introduction to Indigenous protocols before speaking about Indigenous art in exhibitions.

writing about art in exhibitions

Writing about Indigenous art in exhibitions includes writing:

- wall text and labels;
- advertising copy and media releases; and
- catalogue essays.

It is courteous to consult with the artist/s involved, an Indigenous reference group, an Indigenous curator, a curator experienced in working with Indigenous artists and art work, or someone with direct knowledge of the particular community. There are conventions for label and caption text layouts in exhibition and museum settings. Some examples can be found in Appendix 5.

deceased artists and display of artworks (protocols)

The display of Indigenous artwork should be undertaken according to appropriate cultural protocols.

- some communities will request that artwork by a deceased artist not be displayed for a time after the artist's death;
- some communities will request that an artist's name not be used for a time after the artist's death;
- some communities will request that images of an artist not be displayed for a time after the artist's death.

Ensure that the artist's family or community is consulted, so that the appropriate measures can be taken.

authenticity

It is important that the authenticity of Indigenous works displayed in an exhibition is established. The label of authenticity may be of use in an exhibition context.

CASE STUDY 5: Authenticity c.1999

15 Public collections: Indigenous art, and its management

15.1 Acquiring art work for public collections

Due care, and verification of the provenance of Indigenous art works at the time of purchase, will assure their authenticity.

15.2 Care of collections

Indigenous reference groups or researchers and employees should be part of the team which cares for major Indigenous public collections.

15.3 Appropriate archival description and cataloguing terms for collections

Descriptions of objects and artworks held in public collections should be acceptable to Indigenous people.

15.4 Restricted materials

It is unlikely that materials in a public collection of art works are intrinsically of a confidential or sensitive nature, unless they pre-date the 1980s. Early works are usually to be found in very large public galleries and natural history museums, most of which have instituted responsible policies for managing such items.

The Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services outlines three steps for handling of secret, sacred or sensitive materials, which transfer well to any sector. They are:

- the identification of such material in collections;
- the determination of appropriate policies for handling of this material once it is identified; and,
- the strict implementation and observance of those policies in the day-to-day operation of the holding institution.

15.5 Access to collections

For Indigenous people it is important that there is access to collections by the artists, their relatives or members of their community who may have a cultural link to acquired works, and that they feel their presence is welcomed.

CASE STUDY 6: Indigenous access c.1998

16 Research in the Indigenous visual arts sector

There are many sources of ethical guidelines for researching Indigenous culture, including aspects of culture involving the visual arts.

Recommendation 51 of the Royal Commission into Aboriginal Deaths in Custody outlines an appropriate approach to research. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has published a set of ethical guidelines and protocols for Indigenous research. The essential principles relate to:

- informed consent to the research by the community in which the research is to be carried out;
- benefit to the community concerned as well as benefit to the broader Aboriginal and Torres Strait Islander community;
- recognition of Indigenous cultural and intellectual property rights in the material gathered for the research project; and
- appropriate use of research results as agreed with the community.

Ethical guidelines, policies and protocols for research relating to Indigenous Australian culture are produced by most Universities. An example is the document compiled by CINCRM, the Centre for Indigenous Natural and Cultural Resource Management at the Northern Territory University.

17 Management in the Indigenous visual arts sector

17.1 Governance and management

The involvement of Aboriginal and Torres Strait Islander people in the governing, advisory and management operations of organisations which hold substantial collections of their work, is essential.

17.2 Staffing

It is important that Indigenous people are employed wherever possible, in institutions holding collections of Indigenous art. Indigenous people may also be involved in the selection of candidates for employment. Indigenous staff members should be trained, supported, and mentored.

17.3 Culturally appropriate management

An organisation which employs Indigenous staff members, has a responsibility to recognise and respond to their cultural needs and obligations.

17.4 Managing visual arts events

The presence of Indigenous artists is often desired as part of the recognition of cultural meaning attached to art works. When members of more than one community are present, some negotiation may be needed in regard to cultural activity. Material which is appropriate for one group of people to display publicly, may be difficult and even distressing for another group to view.

18 Funding in the Indigenous visual arts sector

18.1 Funding from Aboriginal and Torres Strait Islander sources

Funding from Aboriginal and Torres Strait Islander sources is available as a support for Indigenous artists and organisations. Requests for funding from these sources, by non-Indigenous organisations, should be premised on the maximum inclusion of and benefit to Indigenous artists, curators, organisations and communities.

18.2 Funding agencies

A number of agencies provide funding through programs directed towards the support of Indigenous arts and cultural activity, including:

- the Aboriginal and Torres Strait Islander Arts Board of the Australia Council (the principal arts funding agency);
- the Aboriginal and Torres Strait Islander Commission (ATSIC);
- the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS); and
- State ministries for the arts and culture.

PART 3: Indigenous visual arts and the law

Introduction

Visual art is central to the continuing cultural survival of Indigenous Peoples. It is important for Indigenous artists to know how the law impacts on their obligations in Indigenous society. The law has a marked impact on the cultural life of an Indigenous artist and his or her community. This legal section provides advice to Indigenous artists, and visual arts organisations dealing with them.

19 What is Copyright?

Copyright is a package of rights recognised under the Copyright Act 1968 (Cth). The artist, as copyright owner has the exclusive right to use and reproduce his or her copyright works and to authorise others to use and reproduce his or her copyright works. These are important rights for Indigenous artists.

20 Copyright protects:

- Original artistic works; that is, works created by artists that are not copied from other sources; and
- Works of artistic craftsmanship refer generally to hand-made goods and goods with an aesthetic quality.
- Copyright protects works that are in material form.
- Copyright does not protect patterns or styles.
- Copyright protects the expression and not the underlying idea.
- Copyright provides rights to a recognised individual author - so to enforce rights the author must be identified.
- Copyright does not provide communal rights to traditional designs or styles.
- Whilst copyright protects works of joint ownership, the rights only attach to artists who have contributed hands on to the creation of a piece of artistic work. The contribution of generations of artists is not viewed as a collaborative effort.
- Connecting factors must also be met for copyright to protect the works. That is, the creator must be a citizen or resident of Australia or the work must be first published in Australia.

21 Duration of Copyright

The duration of copyright protection is 50 years after the death of the artist. When this period expires, the works fall into the public domain where they can be freely copied. However, under Indigenous law, many artistic works cannot be reproduced or disseminated without proper consent of the relevant custodian. Even though a work is out of copyright, consent procedures may need to be followed.

22 Who owns copyright in an artistic work?

The artist who creates the work is generally recognised under the Copyright Act as being the owner of the copyright in the created work. However, there are some exceptions to this rule. For instance, copyright in works produced under a contract of employment vest in the employer. Also, if there is a written agreement that states copyright should vest in the commissioning body.

LEGAL CASE STUDY 1: Employment Examples

With photographs, commissioned photographs for private and domestic purposes and portraits, copyright will be owned by the person who commissioned the work. Other photographs, copyright will belong to the photographer. This may raise issues for Indigenous people, who have expressed concerns about the use of their photographs commercially without their proper permission.

LEGAL CASE STUDY 2: Unauthorised Photography, Galarrwuy Yunupingu Case c.1998

The Crown may also assert copyright in artistic works that are made by or under its direction and control.

23 Copyright Owner's Exclusive Rights

The copyright owner of an artistic work has the exclusive right to do all or any of the following:

- i. to reproduce the work in a material form
- ii. to publish the work
- iii. to include the work in a television broadcast
- iv. to communicate the work to the public.

24 Infringement of copyright in an artistic work

It is an infringement of copyright in an artistic work to:-

- Copy the work
- Import the work for sale or hire

LEGAL CASE STUDY 3: M* v Indofurn (The Carpets Case) c.1996

24.1 remedies for infringement of copyright

- injunction to stop the unauthorised reproduction
- damages, or account of profits
- criminal liability for large scale piracy
- orders of seizure
- delivery up

25 Some Exceptions for Infringement

It is not an infringement of copyright in a sculpture or a work of artistic craftsmanship placed on permanent display in a public place to reproduce that work in paintings, drawings or in photographs.

Incidental filming is also an exception.

Further, there are fair dealing exceptions which include research or private study and use for the purposes of criticism or review.

The government may use a copyright work without permission of the copyright owner where the use made is for the services of the Crown.

There are library and educational copying provisions also.

26 Digitisation Issues

The new right of communication to the public provides copyright owners with the right to control their artistic works in the digital form and its electronic transmission on the internet. However, libraries, archives, galleries and museums will be able to digitise the material in the collection to make it available on an internal computer system for staff use only.

27 Moral Rights

Moral rights are:

- the right of attribution of authorship; or
- the right not to have authorship falsely attributed; or
- the right of integrity of authorship.

The rights apply to authors of literary, dramatic, musical and artistic works and authors of cinematograph films.

27.1 The right of attribution

The artist has a right to be identified as the author of his or her work. The author is entitled to be attributed where his or her work has been used in a certain way. For example, the author of an artistic work is entitled to be attributed where his or her work is reproduced in material form, published, exhibited or transmitted.

27.2 The right of false attribution

An author has the right not to have authorship of a work falsely attributed. It is an offence to deal with an artistic work, reproduce an artistic work, or transmit an artistic work, where the attributor knows that the name affixed is not that of the author.

27.3 The right of integrity

The author has the right of integrity of authorship in respect of the work. This right provides that an artist may bring an action if the work is subjected to derogatory treatment. The right of integrity is not infringed if it can be proved that the treatment was reasonable in all the circumstances, or if the author consented to the treatment.

28 Resale Royalty

This section discusses the resale royalty or “droit de suite” which is the right of an artist to receive a percentage of the resale price of an original artistic work. Indigenous artists have received very modest returns from the first sale of their work especially in the light of the relatively early resale of their artistic works at much higher prices. If a greater share of the later resale of works were returned to Indigenous artists the benefit to Indigenous arts and communities would be substantial.

29 Indigenous Cultural and Intellectual Property rights

Indigenous Peoples seek certain rights to their cultural heritage material in order for them to continue their cultural practices. Visual arts, like other aspects of heritage, are inter-related to all aspects of Indigenous life. Indigenous cultural and intellectual property rights are important rights for cultural maintenance.

29.1 Why protect Indigenous cultural and intellectual property?

There is a need to preserve and maintain Indigenous cultures so there is something to pass on to the future generations. There is also the economic rationale. If Indigenous cultural material is being exploited for commercial gain, Indigenous peoples should be in control of the consent process and share in the benefits from any authorised commercialisation.

29.2 What rights do Indigenous peoples want recognised?

The report Our Culture: Our Future sets out a list of rights that Indigenous peoples seek to their Indigenous Cultural and Intellectual Property. These include:-

- The rights to own and control Indigenous Cultural and Intellectual Property;
- The rights to prevent the derogatory, offensive and fallacious use of Indigenous Cultural and Intellectual Property;
- The right to benefit commercially from the authorised use of Indigenous Cultural and Intellectual Property including the right to negotiate terms of such usage; and
- The right to maintain secrecy of Indigenous knowledge and other cultural practices.

29.3 Legal protection of Indigenous cultural and intellectual property

Australian laws do not adequately protect Indigenous Cultural and Intellectual Property, hence there is a need for greater measures including respecting protocols and use of contract law to protect and enforce rights of Indigenous artists.

Copyright law does not provide adequate recognition or protection of Indigenous Cultural and Intellectual Property rights. For instance, rights only last for 50 years after the death of the artist and there is no special protection for sacred knowledge.

29.4 Communal ownership

Indigenous traditional ritual knowledge is communally owned for the benefit of the source community or clan group. This notion of communal ownership is not recognised at law. However, recent Australian case law recognised the existence of a fiduciary obligation between the artist and the clan group where works incorporate traditional ritual knowledge.

LEGAL CASE STUDY 4: Bulun Bulun v R & T Textiles c.1998

Indigenous custodians should give clear and express notice of any communal and customary rights to artistic works.

30 Dealings in copyright

30.1 Selling copyright

When a painting is sold, the copyright remains with the artist. For copyright to be assigned, there must be some form of writing. Once assigned, the purchaser is the copyright owner and can exercise all rights under copyright, with the exception of the moral rights which remain with the artist. Given the need for Indigenous artists to control their works for cultural purposes, the assignment of copyright in works is not recommended. Where possible, assignments should be avoided, and licences should be given for limited purposes.

30.2 Licensing copyright

A copyright licence is a grant of rights to deal with the copyright of a work. Artists can seek to negotiate rights for use of their artistic works under terms and conditions including:-

- purpose
- exclusive or non-exclusive rights
- territory
- time

30.3 Licensing issues and Indigenous art

There may be certain considerations to be taken into account when licensing works. Indigenous artists should ensure that any licensed rights granted to the licensor are not likely to conflict with personal or cultural obligations. Any conditions on use should be clearly notified and included as terms of a written agreement.

LEGAL CASE STUDY 5: Yumbulul v Reserve Bank c.1998

31 Contracts

Each transaction involving the copyright of an artistic work is a contract. To ensure that there is understanding of the terms, it is recommended that such contracts be in writing.

31.1 Licence agreements

A written licence agreement sets out the terms and conditions of a licensing arrangement. These can include:-

- payment
- grant of rights
- nature of licence
- purpose
- time
- no alteration
- attribution

31.2 Agency agreements

To reduce the likelihood of confusion between agents and artists, it is recommended that a written agency agreement be entered into which sets out the terms of the relationship including:-

- exclusive or non-exclusive
- term
- nature of agency
- territory
- commission

31.3 Prior informed consent

The principle of prior informed consent should be observed when proposing commercial use of Indigenous cultural material. It is recommended that artists seek professional legal advice prior to signing written agreements.

31.4 Viscopy

Viscopy is a collecting society for visual artists. Viscopy has many Indigenous artists as members. Copyright clearances can be obtained from Viscopy.

32 Trade Marks

32.1 What is a trade mark?

A trade mark is a sign used to indicate the trade origin or source of goods and services. Registration under the Trade Marks Act 1995 (Cth) can assist artists enforce their rights to protect artistic works.

32.2 Indigenous use of trade marks

Many Indigenous arts centres use logos and trade marks to identify their artistic products and services from those of others. They are also used to show the authenticity of the products. Some of these marks are registered whilst others are not.

32.3 Certification marks

A certification mark is a sign used to distinguish goods or services which possess a certain quality, accuracy or characteristic. Certification marks can be registered under the Trade Marks Act 1995. The National Indigenous Arts Advocacy Association has developed and adopted a national Indigenous Authentication Labelling System that uses two registered certification marks to protect the rights to Indigenous creators - the Label of Authenticity and the Collaboration Mark.

33 Registered designs

Under the Designs Act 1906, a person may register a design to protect the visual appearance of manufactured products. A registered design gives the registered owner the legally enforceable exclusive right to use it to gain a marketing edge and to prevent others from using the design without permission.

34 Selling fakes

The sale of Indigenous arts fakes has received media attention. Such conduct may amount to a criminal offence, or at least infringe trade practices law and sale of goods legislation. The issue of fakes, where a work is not produced by or under the control of the artist, is to be distinguished from the issue of collaborative works where an artist allows others to assist in creation of a work as part of a culturally acceptable practice.

35 Trade Practices and Passing Off

There are laws that make it an offence to engage in misleading and deceptive conduct in the course of trade. These provisions, although focussed on consumer protection and competition issues, may provide some protection against false labelling and marking practices of Indigenous art.

36 Native title and rights to land

The right to paint certain images in Indigenous cultures is linked to Indigenous Peoples' rights to land. In the native title process, artistic works and information about these may be disclosed to the court to show connections with land. Protecting these rights and dissemination of this information should be discussed at the outset of any litigation.

37 Export of Indigenous cultural heritage items

The Protection of Moveable Cultural Heritage Act 1986 protects the control of historical, literary, artistic, scientific or technological objects. Some objects cannot be exported at all. The Act controls the export of significant Indigenous Cultural Heritage that fall into listed categories of a National Cultural Heritage Control List.

37.1 National Cultural Heritage Control List

Indigenous art may fall into categories of protected items of the National Cultural Heritage Control List such as Objects of Australian Aboriginal and Torres Strait Islander Heritage: Archaeological Objects: Objects of Aboriginal and Torres Strait Islander Fine or Decorative Art or objects relating to famous and important Aborigines or Torres Strait Islanders and objects made on mission and reserves that are more than thirty years old.

37.2 Penalties

Where a person exports an Australian protected object otherwise than in accordance with a permit or certificate, the object is forfeited. There are sanctions for the attempted export of protected objects without a proper permit.

37.3 Obtaining permits and certificates

Permits can be obtained from the Department of Communications, Information Technology and the Arts. This section outlines the process of applying for permits and certificates.

37.4 Overseas buyers

An overseas purchaser of Indigenous art and heritage objects which come under the National Heritage Control List will require a permit or certificate to export Aboriginal and Torres Strait Islander heritage objects.

38 Wildlife import and export controls

Indigenous artistic works that include parts of Australian plant or animals may be subject to wildlife export and import controls. These laws should be checked when clearing customs for international exhibitions or sale of works.

39 Estate planning and wills

Copyright in an artistic work lasts for 50 years after the death of an artist. It is important for Indigenous artists to plan for the management of their artistic works after their death. Where applicable, estate planning should observe Indigenous customary laws and practices.

40 Proposals for change

40.1 Stopping the ripoffs

In 1996, an issues paper released by the Commonwealth Government elicited responses on the need for greater protection at law, for Indigenous arts and cultural expression. This paragraph discusses the paper generally.

40.2 Our Culture: Our Future

In 1997, ATSIC and the Australian Institute of Aboriginal and Torres Strait Islander Studies commissioned a major study on the needs of Indigenous peoples for the protection of Indigenous Cultural and Intellectual Property; analysis of current legal protection and strategies for the greater protection of Indigenous cultural and Intellectual Property. This paragraph discusses the findings in brief.

PART 1: The Indigenous arts environment

“Art is, more than ever before, an important vehicle for both exploring and embracing socio-political, cultural and spiritual perspectives, while at a deeper level it touches on the meaning of life itself. Within an individual’s own boundaries, the experience of art can be a factor in personal growth as well as in the formation and realignment of cultural identity.”

Tjalaminu Mia, 2000¹

1 Indigenous cultures in Australia

1.1 Cultural diversity

Indigenous Australian cultures include both Aboriginal and Torres Strait Islander cultures, involving many languages and a diverse group of cultural protocols. There is no single Aboriginal or Torres Strait Islander cultural identity. Nevertheless, there are common cultural elements, one of the most important being that land has profound spiritual and cultural significance to all Australian Indigenous Peoples, including those who now live in urban environments.

1.2 Land rights

“Australia is a land of paradoxical figments of a collective imagination. Myths have been propagated about a wide, brown land - empty, dead at heart, null and void. Indigenous people are made to feel foreigners in their own land(s). Efforts to challenge and correct myths regarding the ‘peaceful settlement’ of Australia have elicited accusations of ‘revisionism’ from conservative sections of the media and politics.”

Brenda L. Croft, 2000²

One of the first major Indigenous land rights submissions to government in Australia came from the Yirrkala community, after large reserves of bauxite were found, and plans were made to appropriate for mining purposes, part of the lands which until then, Yolngu had assumed were still part of their traditional jurisdiction. As outlined in *Aboriginal Art*³ by Howard Morphy, the Yirrkala bark petition reported that the land in question was used by many Yolgnu and asked to be consulted about its future use. The typed submission was glued to bark and painted in clan designs which connected it specifically to the land. The nature of the petition was such that it could not be filed away in the usual manner, and it became well publicised through the press. The resulting court case heard in 1968, brought down a decision against the community, but the ensuing wave of support contributed

¹ Tjalaminu Mia in *Artlink* Vol 20 #1, 2000, p 40

² Croft, Brenda L., in *Beyond the pale*, exhib. cat., Art Gallery of South Australia, 2000, p 10

³ Morphy, Howard, *Aboriginal Art*, Phaidon Press, London, 1998, p 254

to the passing of the Land Rights (Northern Territory) Act of 1976, which gave title to areas of Arnhem Land previously 'reserved' for the use of specific Aboriginal groups.

In 1988, following a meeting of Aboriginal landowners from the Northern Territory, the Barunga statement incorporated the art of desert peoples, along with those of Arnhem Land, as part of a call to the Commonwealth government to recognise the rights of Aboriginal peoples.

However, it was a Torres Strait Islander, Eddie Koiki Mabo, whose litigation against the state of Queensland resulted in the High Court decision that native title rights for Aboriginal and Torres Strait Islander Peoples should be recognised - finally rejecting the legal fiction of terra nullius. The ruling sanctioned Indigenous land claims, resulting in the Native Title Act of 1993 (see 36 Native title and rights to land).

In December 1996, the High Court of Australia handed down a decision (re The Wik Peoples v. The State of Queensland and Others) which stated that native title could co-exist along with pastoral rights on pastoral leases. This decision acknowledged that - contrary to conventional wisdom of the time - native title had not been extinguished in the many parts of mainland Australia under pastoral leasing arrangements, where Aboriginal people still maintained traditional and customary association with their country. Following this ruling, the government of the day proposed a plan to offset the concerns of the pastoral lease-holders. The resulting document, referred to as the 10 Point Plan, was opposed by Indigenous representatives involved in the discussions, and produced much heated public debate.

1.3 Land and spirit: Indigenous connection to land and sea territories

"Whereas settlers see an empty wilderness, Aboriginal people see a busy spiritual landscape, peopled by ancestors and the evidence of their creative feats. These divergent visions produce a tension, one that spills over into Aboriginal art."

Marcia Langton, 2000⁴

Although legal matters relating to Indigenous connection to land have become highly politicised, and on a superficial level seem to be played out on the media stage, the issues arise out of Indigenous Peoples' profound kinship with and attachment to land or sea territories, involving complex layers of spiritual and temporal meaning extending over many generations of family and community. For Indigenous Australian cultures, sacred and spiritual concerns prevail over a 'Western' view of the land as commodity.

The cultures of Indigenous groups reflect the environment of their country. Saltwater, freshwater, desert, mountain or forest environments have long provided varied resources for material use, and site-specific connections with Ancestral Beings. The following excerpt refers, for example, to Ancestral Beings in eastern Arnhem Land, as well as to the objects made from materials easily available from the particular environment:

"The Djang'kawu Sisters were Ancestral Beings from eastern Arnhem Land who carried a variety of sacred objects which included conical mats and bathi or dilly bags. As they travelled across the land their actions changed the landscape, and they gave birth to many children, often drawing them from the inside of their baskets or conical mats. The present day models of these ancestral containers are important ceremonial fibre objects, which vary in design from group to group."

The travels of the Djang'kawu Sisters exemplify the movement of Ancestral Beings throughout the continent. The pathways which connect Ancestral or Creation sites, also connect groups of people from disparate Aboriginal cultures, whose custodial knowledge may encompass the point at which responsibility for pathways and sites transfers to other groups. Indigenous land rights include the concept of sharing, as well as that of custodianship. Morphy⁶ refers to Creation sites in connection with the Dreaming, a term which arose in the process of trying to convey Aboriginal religious and spiritual values to European colonists. He elaborates:

"The Dreaming exists independently of the linear time of everyday life and the temporal sequence of historical events. Indeed, the Dreaming is as much a dimension of reality as a period of time. It gains its sense of time because it was there in the beginning, underlies the present and is a determinant of the future; it is time in the sense that once there was only Dreamtime. But the Dreamtime has never ceased to exist, and from the viewpoint of the present it is as much a feature of the future as it is of the past."

⁴ Langton, Marcia, in *Artlink* Vol 20 #1, 2000, p14

⁵ Mellor, Doreen, & Hamby, Louise, *Fibre Tracks*, in Kleinert, Sylvia & Neale, Margo), gen. eds, *The Oxford Companion to Aboriginal Art and Culture*, Melbourne 2000

⁶ Morphy, Howard, *Aboriginal Art*, Phaidon Press, London, 1998, p 67

⁷ *ibid*, p 68

Though the cultural systems of Torres Strait Islander peoples are different from those of Aboriginal Australia, land and sea territories are also an important part of their spiritual and cultural life. The sea is a constant presence for Torres Strait Islanders, and the stars are focal in navigating the ocean. Other aspects of life in the Torres Strait are evocative of the sea:

“Yes, very important that wauri shell. If I give you that wauri you can't leave me: you're my blood family. That's why we hold on to Torres Strait family here. These two people are like my two relatives.”

Malo got laws like the Christian religion. When wauri becomes known others will see it as one part the Gospel has left behind: “Be kind to one another!” Because wauri tebud is more than one born from the same blood.”⁸

1.4 Indigenous artists speak about land and sea

Indigenous descriptions of land reflect the particular nature of the land and the diversity of Creator Beings involved in the process of bringing it to life. Many artists when describing their work are also describing the land and the Beings connected with it. Following are some references to land and spirit, in the artists' own words.

desert country

*Yalakurlu [big yam] “From there the Dreaming, who was originally a person, spread out like yam roots and became them. Thus the yams which the Dreaming carried with him spread out into his country and burnt the yam roots into many pieces. White ants ate them bit by bit. The Dreaming travelled and was burnt at that place. The Dreaming finished at that place and entered into the earth, going no further.”*⁹

Told by Paddy Japaltjarri Sims and Jack Jupurrula as part of the Yalakurlu story painted on one of the doors of the *Yuendumu School, NT. Published 1987.*

*Jingarrki “This old man Jingarrki stops all around in the hill country near Djugerari community. He lives there in the rocks and trees. We can't see him, he is like mangi (spirit), like wangarr (shadow). He carries a spear to spear the hill kangaroo. He is cheeky, we keep away from him.”*¹⁰

Pijaju Peter Skipper, Fitzroy Crossing, WA, published 1998.

*Mountain Devil “I started a new way of doing my paintings - a new way of thinking about them, painting them and doing them. It's like when you go up in a little plane and you can look down when it's moving. It's like you are wind, moving and looking down on a big sandhill, a big high one from above. The red one is sand, and the white one is apertwe (hailstone). When you go in a plane, you can look down and when you see it, it's like a different one, it changes colour all the time as you move along.”*¹¹

Kathleen Petyarre, Utopia, 1999.

*Ulbatjia “We love to see these beautiful ulbatjia (parrots). They call them Port Lincoln Parrots. With their black heads and that yellow band around their neck, they fly past looking for flowering trees with seeds, especially their favourite sweet seed, what we call lupa (wattle seed). In the old days we used to gather lupa and grind it and bake it in the ashes like damper. They sometimes let us get real close while they ate those seeds as fast as they can.”*¹²

Carol Rontji, Hermannsburg, published 1998

⁸ Kapin, in *Nonie Sharp Stars of Tagai - the Torres Strait Islanders*, Aboriginal Studies Press, Canberra, 1993 p 49

⁹ Warlukurlangu Artists, *Yuendumu Doors*, Aboriginal Studies Press, Canberra, 1992, p 47 (first published by the Australian Institute for Aboriginal and Torres Strait Islander Studies, 1987)

¹⁰ *Telstra Presents the 15th National Aboriginal and Torres Strait Islander Art Award 1998*, exhib. cat., Museum and Art Gallery of the Northern Territory, 1998, p 28

¹¹ *Beyond the pale*, exhib. cat., Art Gallery of South Australia, 2000, p 65

¹² *Telstra Presents the 15th National Aboriginal and Torres Strait Islander Art Award 1998*, exhib.cat., Museum and Art Gallery of the Northern Territory, 1998, p 47

northern parts

Limmen Bight country “In my mind I sit on a cloud on top of the world - and I want to paint what I look down on. That’s in my mind.”

*Ginger Riley, Gulf country NT, published 1994*¹³

The Glyde River “This is no ordinary place. This is my country... This is our traditional area and that is why we don’t want any mining or balanda¹⁴ there... The river (where we are walking) is where our Dreamings are. We have grown up with our culture and have kept it; our sacred sites, our ceremonies, and secret Dreamings. My people and ancestors have lived here for a long time¹⁵”

David Daymirringu, Arnhem Land NT, published 1994

Kungkay and Yiipay “Walk across when it’s low tide, you can go across to the other side, go camping, sit for a day, but you’ve always got to watch the tide or you will get stuck on the other side when it gets really high. Same for Claudie (Yiipay, the big river), you can go across when it’s low tide and get heaps of crabs. There’s an old fish trap there, you can set the net. When it’s low tide you set the net and when it’s high tide the fish get caught and when the tide goes down get heaps of fish. When it gets high tide you’ve got to cross quick ‘cause there’s heaps of crocodiles, big crocodiles there too. This style of painting - old lady Queen, down at the beach - we were sitting there and she was drawing in the sand, drawing for the kids. I used that sand drawing style for this painting.¹⁶”

Rosella Namok, Lockhart River Qld, published 2000.

Torres Strait Waterways “The Torres Strait waterways are rich in an amazing spectacle of colour and form. Varieties of colourful fish abound in the coral reefs, making the waterways a fisherman’s paradise. Reef sharks, turtles, dolphins, stingrays and a multitude of diverse molluscs and a vast array of fish - all thrive in these waters. For the ongoing survival of one of Australia’s Indigenous cultures (Torres Strait Islanders) it is vital that the sea be acknowledged and recognised as part of the domain of living heritage for these people.¹⁷”

Brian Robinson, Torres Strait Qld, published 1998

in the south

The Three Mile “This (waterhole) is where many Aboriginal people lived years and years ago. They gathered water from the river and carried it up the hills. They also fished for fish along the river. The Three Mile was a gathering place for Aboriginal people along the river, also on the land.¹⁸”

Ivan David Campbell, Tailem Bend SA, 1998

The River Murray “The River (Murray) holds special memories of sad times and good times for me and my people. The river and creeks that fed the river have provided us with food and a special place for us for countless generations.¹⁹”

Ian Abdulla, Barmera SA, published 1998

Eulo “The country abounds with bird life, fauna and flora including the attraction of the unique mud springs, opal mines, lakes and the artesian bores. Growing here is the honey bearing pollen (renowned for its honey) Yapunyah flowering tree. The gidgee, mulga and bloodwood tree are used for producing artefacts such as killer boomerangs and didjeridoos.²⁰”

Gloria Beckett, Eulo Qld, published 1998

Gunadah Hill “Gunadah Hill is my place. I was born there. This place is part of me. It contains all my memories... Gunadah Hill is now littered with the fragments of a history which is not mine.²¹”

Rea, Sydney NSW, published 1998

Aboriginal Embassy “The Tent Embassy was the most powerful contemporary political statement ever performed by Aboriginal and Torres Strait Islander people. From that stance, against all odds, today’s Aboriginal organisations were born. For many of our people, an emerging political consciousness of our place in the world was established. The ‘Tent’ and the small block it sits on is a shrine to our strength to this day.²²”

¹³ Neale, Margo, *Yiribana*, Art Gallery of New South Wales, 1998,

¹⁴ balanda’ - non-Indigenous people

¹⁵ Neale, Margo, *Yiribana*, Art Gallery of New South Wales, 1994, p 118

¹⁶ *Beyond the pale*, exhib. cat., Art Gallery of South Australia, 2000, p 49

¹⁷ The Fourth National Indigenous Heritage Award, Australian Heritage Commission, Canberra exhib. cat., 1998 p 46

¹⁸ *ibid*, p 23

¹⁹ *ibid*, p 18

²⁰ *ibid*, p 21

²¹ *ibid*, p 45

²² *ibid*, p 37

*Clinton Nain, Thornburg, Melbourne VIC,
published 1998*

Cape Barren Island "Politics has affected my life from growing up on Cape Barren Island. The island was governed by the Cape Barren Island Reserve Act until 1951, and my people were segregated to an area of land called 'The Reserve'. My family left the island in the late 1950s to live on Flinders Island, where we were referred to as 'half-castes'.²³"

Lola Greeno, Launceston TAS, published 2000

2 Indigenous identity

2.1 Alienation and white settlement

"Their life was without illness and pain and people were healthy and worked and were very happy. They grew into strong young men and women without any diseases because of their good diet, consisting of wangunu, kalu kalu, kunakanti, wakati and figs.

We became sick from the new food whereas our food is good medicine, bush medicine. Bush food is nutritious, like mangata and wakati, and people were living well without internal diseases."

Nura Rupert, Ernabella SA, published 1999²⁴

During the past 200 years, following colonisation, Indigenous cultures have been assailed by a variety of attacks on their coherence and structure. The endeavour to come to terms with settler cultures and the particular challenges this has brought have shaped contemporary Indigenous identity. The destructive elements of contact between Indigenous Australians and settler/colonisers were many. They included the incidental loss of food sources as land was cleared, the introduction of diseases to which Aboriginal people had no immunity, and the various recorded instances of poisonous substances deliberately introduced into food and water sources.

"It was also here that navvies getting hickory logs for the railway were forced to leave one man on guard in camp 'otherwise every scrap of food is taken by the thieving rascals. A little "Rough on Rats" judiciously disposed amongst some damper would effectually stop these annoyances.'...It is not particularly surprising that Djabugay were stealing food from the settlers, as their traditional food gathering and hunting areas were being taken over by the Gadja settlers.²⁵"

Added to these were the murders of individuals and the massacres of groups of Aboriginal people, now publicly recorded in such volumes as *Blood on the Wattle*.²⁶

²³ *Beyond the pale*, exhib. cat., Art Gallery of South Australia, 2000, p 29

²⁴ Compiled by Eickelkamp, Ute, *don't ask for stories' the women from Ernabella and their art*, Aboriginal Studies Press, Canberra, 1999, p 7

²⁵ Bottoms, Timothy, *Djabugay Country, An Aboriginal History of Tropical North Queensland*, Allen & Unwin, NSW, 1999, p 33

²⁶ Elder, B, *Blood on the Wattle, Massacres and maltreatment of Aboriginal Australians since 1788*, New Holland Publishers (Australia) revised edition 1998, pp 45, 4

Aboriginal family life and kinship structures have perhaps suffered the most disruptive impact. These coherent structures, underpinning Indigenous cultures and societal frameworks, were inevitably changed simply by the arrival and rapid expansion of settler cultures. Additionally, the disintegration of Indigenous cultural and family life was often a deliberate aim of the colonisers, as a way of imposing their own value systems. Bruce Elder describes the situation on Flinders Island,²⁷ when George Robinson, self-styled Protector and Conciliator, took control, insisting on cosmetic measures such as name changes for those under his jurisdiction, but ignoring the deplorable condition of the tattered clothes they were forced to wear, and allowing the food and water supplies to deteriorate. Elder observes:

“Robinson was unconsciously distancing these Aboriginal people from the attitudes, values, and way of life which had sustained them for over twenty thousand years. He was turning highly efficient hunters and collectors into shopkeepers and gardeners who wore dirty clothes and who could recite the Lord’s Prayer by rote. In reality his British arrogance was slowly killing them. He simply could not conceive of a situation where any civilisation could exist other than his own.”

In his book *Exterminate with pride*²⁸ Bruce Breslin describes how initial acceptance of Europeans by Aboriginal people in the Townsville-Bowen area eventually turned to hostility, after it became clear that an invasion was in progress. Confrontation and conflict escalated.

As both Breslin and Henry Reynolds point out however, not all white settlers were either in favour of the wholesale removal of Aboriginal people from their lands, or of the massacres and maltreatment which increasingly decimated Aboriginal populations. Reynolds’ book *This Whispering in our Hearts* draws on many sources to illustrate the disquiet felt by a proportion of the population, from earliest settlement, and postulates that:

“Some were so troubled by what they saw around them that they devoted themselves to the amelioration of Aboriginal suffering or to the denunciation of violence and brutality. In doing so they courted the anger, hostility and even the hatred of their contemporaries. They voiced the unspeakable, exposed carefully cloaked self-deception, dragged out hidden hypocrisies. For their pains they were seen as self righteous, disturbing, dangerous, obsessive or mad.”²⁹

2.2 The separation of Indigenous children from their families

“How many Aboriginal parents have cried their way to their graves?... The crimes of ignorance will haunt the nation until Australia pays its dues.”

Dr Kumantjayi Perkins, Sydney NSW, published 1989 and 1999³⁰

Numbers of Indigenous Peoples were forcibly moved from their traditional lands, and confined in government settlements, or missions run by religious groups. Within some of these settlements the infamous dormitory system operated, with small children being removed from their family’s influence, and confined to ‘dormitories’ often with no access, sometimes with weekend access, to their mothers, until late adolescence. By this time, the emotional separation was often compounded by physical separation, as adults and/or children were moved around by the authorities, usually without consultation, and often without the knowledge of either parent or child, of the new destination.

²⁷ *ibid*, p 46

²⁸ Breslin, Bruce, *Exterminate with pride: Aboriginal-European relations in the Townsville-Bowen region to 1869*, James Cook University of North Queensland, 1992

²⁹ Henry Reynolds, *This Whispering in our Hearts*, Allen & Unwin, Sydney, 1998, p xiv

³⁰ Peter Read, *rape of the soul so profound*, Allen & Unwin, 1999 p 146

This deliberate separation of Indigenous children from their families, in order to socialise them as Europeans, was an extension of a practice of forced removal of whole groups of people to places far from their own lands. Both state and federal legislation exerting control over the movement of Indigenous Peoples and their children, was implemented at different times, for the most part based on the premise that only by acculturation and familiarisation with 'white' ways (considered to be superior), would Indigenous people come to contribute usefully to society and enjoy the benefits of that society. In New South Wales, according to historian Dr Peter Read, official records show that at least 5,625 children had been removed from their families between 1883 and 1969, and placed in Aboriginal Children's Homes³¹. The situation in each state was different, but in every part of Australia, children were removed, sometimes with the rationale that education would be provided, sometimes on the pretext that the child was neglected, and at times simply because the child was Aboriginal, and of 'part' descent. Included in a 1911 memorandum from the records of the Department of External Affairs held in the Australian Archives,³² was the statement:

"One of the first steps to be taken would be the gathering in of all half castes living with aborigines (sic). The Police could do this work. No doubt the mothers would object but the future of the children, would, he considers outweigh all other considerations."

Such statements marked the commencement of formal separation policies in Australia, which were to continue under different legislative guises until the 1980s. The children removed from their families under these regimes have come to be known as the Stolen Generations.

3 Reconciliation, reclamation and renewal

3.1 Reconciliation

In 1967 more than 90 percent of eligible Australians voted in a referendum to give the Commonwealth the power to make laws for Aboriginal people and for Aboriginal people to be counted in the census. Gradually the rights of Indigenous Australians were recognised, and the injustices, which had formed a seemingly inevitable part of daily existence, began to be acknowledged.

Although many languages and cultures had been lost, Indigenous Australians set about reclaiming their heritage, in various ways. Access to museum and art collections was part of this activity, and part of the growing political awareness of the Indigenous community. Many Australians from all walks of life were now to become conscious of the Aboriginal and Torres Strait Islander community and the injuries it had sustained, for so long.

In 1991 the Commonwealth government legislated for the establishment of the Council for Aboriginal Reconciliation, comprising community leaders drawn from Aboriginal and Torres Strait Islander communities, the industries which have the most impact on Aboriginal people and from business and other sectors. As well as engaging in activities to promote the process of Reconciliation itself, the Council has endeavoured to encourage a people's movement, ensuring that many individuals and groups in the community are engaged in creating a lasting foundation for Reconciliation. The Council for Reconciliation, dissolved in January 2001, had worked towards "a united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all". A major event, Corroboree 2000, incorporated the ceremonial presentation to the Australian government of a Reconciliation document which the Council produced during the final phase of its incumbency.

Despite the gains made in reconciling different cultural approaches within Australia, in both formal and informal ways, a degree of adversarial behaviour continues as part of the social dynamic. Artists have taken their place in the dialogue and discussion surrounding land claim issues. Native title has been legitimated through the High Court rulings and legislation, but there are still hotly contested areas, and many claims await their day in court.

³¹ Colin Bourke, & Bill Edwards, *Family and Kinship*, in Colin Bourke, Eleanor Bourke, & Bill Edwards, *Aboriginal Australia*, University of Queensland Press, 2nd edition, 1998

³² Macdonald, Rowena, *Between Two Worlds - The Commonwealth government and the removal of Aboriginal children of part descent in the Northern Territory*, IAD Press, Alice Springs, 1995, reprinted in 1996, p 10

3.2 Reclamation and renewal

The work of many Indigenous artists today reflects a growing confidence in the ability to reconnect with culture. Ironically, it is often the 'ethnographic' curiosity of Victorian era settlers, which has come to provide the archival resources for Indigenous research. The large museum collections of 'ethnography' from colonial times, now hold at least some of the information which in many cases was lost when connection to the land was subsumed in assimilation practices. Although these fragments can only provide glimpses of the complexity of Indigenous cultures before settlement, in areas which are now urbanised, or given over to agricultural activity, they are nevertheless precious links with identity and heritage. Many artists are using these fragments to create personal links with their culture.

Fiona Foley, for instance, deconstructing ethnographic photographs, presents images of herself in a cultural context she knows only through historical documents and collections, in *Native Blood* (1994). Both Ellen Trevorrow and Yvonne Koolmatrie work with an ancient fibre technique, and through items held in the South Australian Museum, and film footage taken in the 1930s, are able to verify original technique and usage details, of the objects they now create within contemporary art practice. Palawa artist Lola Greeno has been involved in the retrieval of cultural practices such as the manufacture of shell necklaces and fibre objects in Tasmania. Greeno is one of a number of artists in Tasmania - where culture was particularly ravaged by settlement - who are creating items linked, either by medium, technique or function, to traditional cultural practices.

4 The Indigenous arts and development within non-Indigenous frameworks

4.1 Art, Culture and Claim

In pre-settler times, Indigenous cultures in Australia did not refer to 'art', in the same terms that European cultures had developed. Art was nevertheless an integral part of life and community activity - as part of the pleasure of decoration; as reflection and enhancement of the power of ceremony; and as an implicit confirmation of the innovative and creative capacities of peoples whose cultural life was an acknowledged and important part of the social framework.

Many land claims in Australia now have accompanying testimonial art work and ceremonial performance or storytelling related to place, often occurring on site as part of a judicial hearing. A recent and celebrated work of this nature is *Ngurrara (my country)*, created on a grand scale and measuring ten by eight metres. This collaborative canvas, produced by 50 artists from Mangkaja Arts in Fitzroy Crossing in Western Australia, illustrates clan connections and links to 80,000 square kilometres of land, and was submitted as part of the Great Sandy Desert claim to the National Native Title Tribunal in 1997.

As a phenomenon, the practice of creating works of art to demonstrate ceremonial links to land highlights a concept of ownership which differs from that espoused by Western economics-based systems. It is instructive to note that the Wik decision handed down by the High Court in 1996, and its decree that native title could co-exist with pastoral rights on pastoral leases, was welcomed by Aboriginal people, despite knowing that in final decisions about land use, the pastoral lease owner's preference must take precedence. Aboriginal people were willing to share rights to land - so long as it allowed them the opportunity to continue to fulfil customary and traditional responsibilities to that land. Pastoral lease owners, with a few notable exceptions, were outraged at the thought of allowing Indigenous people any rights at all, even though it had been pointed out by experts in the courts, that despite Australia being declared *terra nullius*, these leases had been established in the 19th century by Britain, expressly to ensure that the land was not seized entirely away from the Indigenous population.

Closely linked with the land and any Indigenous notion of title and privilege, is responsibility, expressed through ceremony and careful procedure in relation to it. Art and ceremony has always encompassed the notion of 'claim' in Aboriginal cultures, even if indirectly. The marking of bodies with ochred designs is specific and carried out with explicit and territorial intent. Insights into land and connections with it are expressed through visual symbolism in ceremony and the Law, and spiritual and religious insights and activities are integral to secular existence. Thus it is a matter of course for Aboriginal people to use ceremonial activity and art to demonstrate claim and connection to the land as part of a complex system, incorporating both material and non-material elements. Jenny Green³³ writes of a group of Central Desert women of Utopia:

"The women say they perform awely (ceremony) to hold and look after their country, promoting feelings of happiness, health and wellbeing in the communities. They sing to ensure that bush plants continue to grow in abundance, bush animals proliferate and to make babies grow fat."

She accompanies the essay in question with a photograph of Lily Sandover Kngwarreye placing a painted and feathered ceremonial pole in the ground for Irrwelty, her mother's country, as evidence for the Utopia Land Claim in 1979. Thus the act of laying claim through dance and through art, is performed within a contemporary paradigm.

The Utopia women's viewpoint is reiterated through ceremony and traditional Law, and visually, by means of differing media - including the silk batik lengths for which they have become renowned. It was from this batik tradition, developed in collaboration with Indonesian artists, that the painting of the late, celebrated Emily Kngwarreye arose. Many of her early paintings employed the use of overpainted dots to obscure the restricted designs representing various aspects of her country, north-east of Alice Springs. Her work changed stylistically over a period of a few years, always remaining abstract in form, and undeviating in content - comprising direct, powerful and personal allusions to land and her connection with it. The work of this artist is just one example of many, where known and familiar connections to land are articulated through art.

In urban communities, claim has taken on a broader definition. Direct connection with land is frequently untraceable, however Indigenous identity remains strong, and there are many socio-political issues which have been articulated through the visual arts. Artists like Robert Campbell Junior, HJ Wedge and Gordon Hookey have produced powerful commentary and highly personal observations on the consequences of settler and Indigenous contact, and on human rights issues affecting Indigenous Australians in urban environments.

Irony is often used by artists like Destiny Deacon and Lin Onus. Their seemingly innocuous and often humorous observations carry a 'sting in the tail' and acute references to the social and cultural effects of colonisation on Aboriginal or Torres Strait Islander life. In a related way, Ian Abdulla's documented memories of rural Australia refer to loss of land, and the cultural traditions which subsequently developed in response to changing circumstances.

4.2 Indigenous artists and Contemporary art movements

In the Western Desert areas of Central Australia, west of Alice Springs, the origins of the modern desert painting movement lie in Papunya, a remote government-established settlement. Geoffrey Bardon, an art teacher at the Papunya school, encouraged the children in his classes, along with a group of older men who became interested in painting, to use the designs and markings from their desert cultures. A recent catalogue refers to these events:³⁴

"Most of the artists painting with Papunya Tula now live and work in and around Kintore or Kiwirrkura, after the movement back to the homelands in the early 1980s. When Geoffrey Bardon went to Papunya in 1971, there were around a thousand people from various language groups - Anmatyerre, Arrernte, Luritja, Pintupi, Warlpiri - and from different parts of the desert... Their own Dreaming stories were to come to life in another way through this painting activity and through the formation of an artist- and community-operated organisation which was to provide a model for many remote and urban communities."

³³ Green, Jenny, *Singing the silk: Utopia batik art*, in Ryan, Judith & Healy, Robyn, *Raiki Wara, Long Cloth from Aboriginal Australia and the Torres Strait*, National Gallery of Victoria, 1998, p 45

³⁴ Mellor, Doreen and Megaw, Vincent, *Twenty-five years and beyond, Papunya Tula painting*, exhib. cat., Flinders Art Museum, Adelaide, 1999 p 13

Papunya Tula Artists Pty Ltd has facilitated the work of hundreds of artists since the early 1970s. The company has been a catalyst for the expansion of Australian Indigenous art practice from its ceremonial, land-based orientation to encompassing the external interest and demand embodied in the art market. The adaptive capacity of the artists involved was not related only to the ability to meet market demand however, and to negotiating the requirements of a system completely alien to the cultures concerned; it was also a major and significant development and transformation of art forms, using the new materials and techniques which were made available to the artists in question. The artists had to revise their concepts of art making within their particular cultural milieu, within the space of very few years being joined by women and younger men in an activity which had at first been led by senior male custodians. Even more complex relationships then applied within these frameworks, relating to appropriate treatment of culturally secret and/or sacred material in painting and art activity.

Painting is not the only visual media important to Aboriginal and Torres Strait Islander cultures. Three-dimensional work was, historically, part of the cultural environment and has now also been developed within the framework of the art market. With these new perspectives, what had once been viewed by the general public as souvenir artefact production, came to be recognised as craft practice or sculpture, and a wide variety of these practices have now developed using wood, fibre, textiles, glass and other three-dimensional media. In addition, film and new technologies have become incorporated into the range of media used by artists living in urban, rural and remote communities. In the spirit of the integrative nature of Indigenous cultures, these are all perceived as visual art, although the quality varies and the market ranges from high volume 'tourist' art to that collected by major museums.

An active discourse on the concept of innovation and contemporaneity has surrounded the production of Indigenous art since the early days of the Papunya movement. There has been consistent effort to counteract the notion that the art of remote area communities where cultural traditions and practice continue, is 'traditional' and the art of urban-based artists is 'contemporary'. Cutting edge art is to be found in all Indigenous cultural environments. Who could relegate to the past by terming it 'traditional', the art of Kitty Kantilla, Rover Thomas, Emily Kngwarreye, Djardi Ashley or Jack Wunuwun, to name just a few of the hundreds of artists whose work is created in strong cultural environments, often using clan designs or traditional media? The work of these artists is as courageously innovative, as future-oriented, and as

excitingly potent as that of Brenda L. Croft, Darren Siwes, Destiny Deacon, Judy Watson, Gordon Bennett or Fiona Foley.

Correspondingly, the work of urban-based artists must now be acknowledged for its cultural content. In towns and cities, the social structures and environment differ from remote areas where Aboriginal languages are still learned as a first language, and cultural contexts reflect the continuum of Aboriginal life and its connection with the past. However, artists' cooperatives like Boomalli in Sydney, and centres such as Tobwabba on the central coast of New South Wales, assert their Indigeneity and their links with land and culture. A different exploration of cultural history occurs through the work of such artists as Pamela Croft and Sandra Hill, confronting the trauma of separation from their families through art; or Ian Abdulla, who paints the cherished memories of his lively, but hardworking and frugal childhood in rural South Australia. The provocative socio-political assertions of Clinton Nain, Brook Andrew, Gordon Bennett, Richard Bell or Robert Campbell Jnr resonate as cultural messages with their own particular location in time and place, as do the three-dimensional works of Nikki McCarthy, Ellen Jose or Ken Thaiday.

Artists working in diverse contexts - in urban, rural and remote communities - or through commercial galleries, art and craft centres or artist cooperatives, personify diverse aspects of the wide-ranging idiom of contemporary Indigenous art in Australia.

5 Support structures

The frameworks for supporting Indigenous art in Australia vary according to the environment. The most cohesive support network is that provided by remote art and craft centres, and their associated advocacy organisations - Dumbartung (based in Perth, WA); Desert (based in Alice Springs, NT) and the Association of Northern Kimberley and Arnhem Aboriginal Artists (ANKAAA - based in Darwin, NT). Other centres have been established in regional Australia, and others are to be found in the larger cities. As with most arts organisations, the majority of these centres are in some degree publicly funded by either state or federal government.

5.1 Remote community art & craft centres

Funded primarily by ATSIC, community based art and craft centres in remote areas play a pivotal role in art production and artist support in their regions, as well as providing a more general focus in their particular communities. Every centre is managed by an Aboriginal Board. These Boards employ both Indigenous and non-Indigenous staff and trainees. The centres are often the only means of generating external income for members of the community, but their brief is much wider than that of conventional businesses.³⁵

In communities where employment opportunities are limited, art and craft centres fulfil socio-cultural and training functions as well as assisting and supporting art production. They are directly linked to other social and cultural activities within the community, often being a meeting point for members of the community. They operate under difficult conditions, in very remote locations, and differ according to their environment, history, and the range of goods they produce. A list of remote art and craft centres is attached at Appendix 3.

5.2 Regional and urban art centres

Centres which support the work of Indigenous artists in rural or urban environments are even more diverse in their structures and operating environments than remote art and craft centres. There are not so many of them; they tend to operate more individually, without the benefit of an umbrella advocacy association; their establishment has been a response to circumstances varying markedly, one from the other; and their aims and objectives often differ. Three organisations serve to illustrate the diversity of these centres:

- The National Aboriginal Cultural Institute, Tandanya, in Adelaide was established in 1989 as Australia's first Indigenous multi-arts complex. It is funded by the state government in South Australia and has developed a respected visual arts program presenting in-house exhibitions as well as national and international touring exhibitions. Other areas and activities of the centre have contributed to its lively style, including theatre performances, artists' workshops and a thriving retail business, which provides an outlet for cultural product;

- Boomalli Artists' Cooperative has functioned as an exhibition/workspace since 1987. Established by a group of artists then working in Sydney, the idea grew through a series of informal meetings where issues relating to the cultural authenticity of urban-based art were passionately discussed. Although established by urban-based artists, Boomalli soon came to be known as an organisation which would also exhibit the work of Indigenous artists from both remote and rural areas, in an Indigenous context;

Tobwabba, in the regional New South Wales town of Forster, has made a success of producing and retailing Indigenous designs in textile clothing and other items. Like Tandanya, a member of the Australian Indigenous Art Trade Association, this Aboriginal company promotes and sells art from the coastal regions nearby, and is assertively retail in character.

5.3 Useful organisations

A number of organisations provide advocacy and information services for artists, art workers and organisations working in both the Indigenous and wider visual arts sector. Selected organisations and their work are featured at Appendix 1.

5.4 Funding support agencies

The Indigenous visual arts sector calls upon a number of funding agencies for support. These are described at Appendix 2.

5.5 Market opportunities

Various opportunities for marketing art works exist within the Australian arts environment.

³⁵Wright, Felicity, and Morphy, Frances, eds, *The Art & Craft Centre Story*, Vol. two summary and recommendations, ATSIC, ACT, 1999, p 5

commercial galleries

Commercial galleries and dealers committed to Indigenous art have the expertise, and will often make the effort, to chart a career path for an artist, ensuring that work is shown in appropriate venues and ensuring exposure for the artist, in order to enhance the artist's professional reputation and to create professional development opportunities for the artist. This becomes a mutually beneficial arrangement, contributing to the commercial success of the gallery enterprise. It is up to the artist to decide whether they wish the gallery to be a sole representative of their work or whether they wish to establish a relationship with a number of galleries. There are many reputable dealers and galleries in Australia, and a wide range of Indigenous art is offered on the market through these commercial enterprises. Many are members of industry associations such as:

- The Australian Commercial Galleries Association, which was formed more than 25 years prior to publication of this document, to assist in establishing benchmarks of commercial practice in the visual arts industry;
- The Australian Indigenous Art Trade Association, established in January 1998, which endeavours to support the Indigenous visual arts sector, and its members, as they engage in commercial activity. The Association is a recent industry initiative, which arose partly as a response to various unfortunate events with regard to allegations of fraud and impersonation in the Indigenous art sector. It was established as an innovative attempt to self-regulate this industry sector, and includes both Indigenous and non-Indigenous member organisations:

"The Australian Indigenous Art Trade Association is the national organisation for persons and organisations experienced in the business of Indigenous art. The organisation operates to promote the ethical trade of Indigenous art and to provide a forum where members can discuss issues relevant to the industry. AIATA recognises above all that the industry depends on the creative genius of Indigenous artists producing cultural material and that the long term viability of the industry depends upon that culture remaining strong."³⁶

retail outlets

There are countless retail outlets through which Indigenous artists and craftspeople can sell their goods. Some are connected with particular communities, and others stock goods from various communities and manufacturers. Further contacts can be found in ATSI's 2000-2001 Visual Arts and Crafts Resources Directory.

An Indigenous initiative, Tobwabba, as outlined below, has been particularly successful in both retail and wholesale areas:

"Tobwabba Art' is a 100% Aboriginal-owned artist collective providing employment and income for twenty-two Aboriginal artists and staff. Beginning in 1992 with an Aboriginal art and culture course for the people of the local Aboriginal community, presently it is an art and design studio/gallery producing fine art, sculpture and designs for over thirty licensees. Community Development is the basis of Tobwabba, and its most fundamental precept. When Tobwabba began, there was a ninety percent unemployment rate in the Aboriginal community. Tobwabba was conceived as an innovative employment creation program, which would also, it was hoped, encourage a new sense of Aboriginality amongst its participants. Tobwabba has been successful beyond anything that was hoped for, ultimately it is a business built around culture, not a culture built around business. The business provides one of the definitive models of a successful Aboriginal enterprise."³⁷

museums/public galleries

Many public galleries and museums organise exhibition programs, which present opportunities for Indigenous artists to exhibit their works. In addition, these institutions often hold collections of Indigenous art, which may provide opportunities for artists' work to be purchased. Many of these organisations, especially at state and national level, employ Indigenous curatorial staff, facilitating access for those artists who wish to view the collections and who may wish to explore possibilities for their own work to be acquired.

³⁶ *Australian Indigenous Art News*, Vol 1 No 2, p 1

³⁷ From the Tobwabba Art website - www.tobwabba.com

Indigenous cultural centres

Indigenous cultural centres of all sizes aim to promote the work of Indigenous artists and where appropriate, to exhibit, or display and sell it. Each centre has its own particular style and emphasis. Some - like Tandanya National Aboriginal Cultural Institute in Adelaide, South Australia - provide opportunities for Indigenous artists to exhibit in a museum environment, as well as running a retail outlet and performance space; others such as Galeena Beek Living Cultural Centre in Victoria, or Dreamtime Cultural Centre in Queensland, have focussed on retail sales and historical displays. A further example of a cultural centre simultaneously displaying merchandise, collection display and art works in the same space, is Cooramah Art & Cultural Centre at Glen Innes in New South Wales.

6 Visual arts and cultural organisations in the wider community

This section provides a brief overview of the types of public institutions where collections of Indigenous art reside, or exhibitions of Indigenous art might be shown. Museums, galleries, and other cultural and arts organisations fall into this category. The roles these institutions play in supporting and providing a conduit to the wider community for the Indigenous arts, are diverse in scope. It is important that Indigenous views are represented within them, and that the principle of self determination is supported as far as it can be, given the particular resources available to each organisation. Indigenous input into recruitment practices and policy development is a key factor. Information about the hundreds of such organisations which operate throughout Australia can be accessed on-line, through the Australian Museums On Line (AMOL) Exhibition Venues Database <<http://amol.org.au/craft/venuesdatabase/>> and in the latest ATSIC Visual Arts and Crafts Resources Directory, each version of which is a well-designed, colourful and useful guide to both Indigenous and non-Indigenous visual arts organisations.

6.1 Natural history museums

Natural history museums have collected the material culture of Australia's Indigenous Peoples ever since first contact. Unfortunately, this activity reflected the prevailing notions of the times, and items of Indigenous material culture were regarded, on the whole, as primitive or exotic curiosities. In contemporary museum environments, there is a far greater awareness of the value of diversity, and of the value of the cultural material held, often in collaboration with Indigenous Peoples. Many

museums have undertaken repatriation programs of sensitive items to relevant communities, in close consultation with the communities concerned. Most state or national museums now have Indigenous curators, trainees, anthropologists or consultative committees, to assist in the appropriate safe-keeping of collected Indigenous items.

Museums in Australia are now much more likely to demonstrate respect for the cultures whose items reside in collections, by involving relevant communities in the display and interpretation of cultural material and by making the collections accessible. In 1994, the policy document *Previous Possessions, New Obligations* was launched, to provide a way for museums to approach Indigenous cultural issues. A plain English version with case studies has been published. A protocols document, *Taking the Time* was produced by Museums Australia Queensland. Both these documents are reviewed in 7, below, and details for accessing the documents follow at the end of the document.

The situation with museums in other countries is somewhat different. Many overseas museums, especially in Europe and Great Britain, hold collections of Aboriginal or Torres Strait Islander material. Small museums in European countries will often have a few objects in their collections that were brought back by travellers (often sailors) as mementos. Larger museums often hold major collections of Indigenous material, sometimes including human remains collected for 'scientific' purposes. Responses to requests for repatriation have varied, but it is increasingly recognised that the collection practices and mode of collection of much of this material, often left much to be desired, and that many Aboriginal and Torres Strait Islander individuals and communities are rightly distressed and irate that their cultural heritage can only be accessed at the discretion of specific institutions and their mainly non-Indigenous staff.

6.2 Specialist museums

Specialist museums are particularly diverse in size and nature. They may be national institutions, such as the Maritime Museum in Sydney, or state-based museums, such as the Maritime Museum at Port Adelaide in South Australia, the Migration Museum in Adelaide or the Victorian version, the Migration Museum in Melbourne. There are many more small, local museums, sometimes professionally managed, such as the Sugar Museum in Mourilyan in North Queensland, and sometimes operated in a volunteer capacity by historical society members. These may be related to the specific history of the locality they serve, or they may be specialised according to the types of material they keep.

6.3 Indigenous Peoples and museums

Small museums are often part of, or serve Aboriginal communities. There are many examples of community museums, from Yarrabah in North Queensland, to Nguuu on Bathurst Island in the Northern Territory, or the museum at Camp Coorong in South Australia. Although the static Victorian era museum is alien to the cultures of Indigenous Australia, objects of special significance to particular groups of Indigenous people, were traditionally protected and held in keeping places, and this continues in contemporary Indigenous settings. Less recognisable in a European framework, were the non-material educative methods and cultural expressions which were valued and kept safe within the frameworks of oral traditions.

Songs, dances, oratory, designs, and ceremonial formalities were cared for in ways that ensured their continued value and place within communities. Collection of material culture and recording of cultural practices was often undertaken by anthropologists, ethnologists, archaeologists or other interested parties. Most of this material has been transferred to museums. This has been problematic, especially when restricted information and objects were not treated appropriately, or appreciated as part of a living and credible culture; however in later years some of this material has become a valued resource for Indigenous people.

6.4 Art museums and public galleries

As with other museums, art museums can be large or small, national, state or regional in focus, and their collections of Indigenous visual art can vary in size. The National Gallery of Australia, and the state art galleries are art museums - the usual defining feature of an art museum being the existence of collections of visual art held within the institution. However, some galleries or cultural centres which do not collect, are also defined functionally as art museums, as their practice falls within similar boundaries to the collecting institutions. Regional galleries are often managed by local councils, and they usually reflect the size of the community they serve. Universities often operate galleries or art museums, usually in conjunction with collections which either reside in museum storage, and/or on the many walls of the University itself.

Art museums may hold culturally sensitive material, although this is unlikely. More recent art is usually produced for the market, rather than for restricted cultural activity, although it is not unknown for sensitive items to find their way into collections. Early art, collected before the market developed an interest in Indigenous Australian art, may be of some concern. Consultation with Indigenous groups is crucial, and an important way to avoid problems in this area. Most state or national galleries have Indigenous curators,

trainees, consultative committees, or all three, to assist in the appropriate acquisition and care of Indigenous art.

Smaller museums may see the employment of Indigenous staff as beyond their resources, but it is here that the issue of governance arises. An Indigenous perspective can be introduced through the inclusion on Boards or Advisory Committees, of Aboriginal or Torres Strait Islander people, or by the establishment of informal reference groups for activities such as cultural surveys or the development of acquisition policies. There are various ways in which small museums can be assisted with the above measures, and in New South Wales for instance, the Museums and Galleries Foundation has undertaken a specific program of referral of small regional museums to Indigenous contacts, in order for appropriate consultation to take place.

7 Other cultural protocol documents

A number of protocol documents have been produced in recent years, to meet the needs of particular communities, organisations, sectors or situations. A selected list of these guides and how to access them appears at the end of the document, and a brief overview of the contents of five of them appears below. Those reviewed are:

- Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property Rights, 1998, written and researched by Terri Janke, Michael Frankel & Company, Solicitors, for Australian Institute of Aboriginal and Torres Strait Islander Studies, and the Aboriginal and Torres Strait Islander Commission;
- mina mir lo ilan man - proper communication with Torres Strait Islander people, produced in conjunction with protocols for consultation and negotiation with Aboriginal people by the Queensland government, Department of Aboriginal and Torres Strait Islander Policy and Development, 1998;
- Taking the Time - museums and galleries, cultural protocols and communities, A Resource Guide, 1998, produced by Museums Australia Inc. (Qld);
- Previous Possessions, New Obligations, a policy document produced by Museums Australia in 1994, to provide a way for museums to approach Indigenous cultures. A plain English version with case studies has been published; and.
- Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services, compiled by Alex Byrne, Alana Garwood, Heather Moorcroft and Alan Barries, and endorsed at the Aboriginal and Torres Strait Islander Library and Information Resources Network (ATSILIRN) conferences, December 1994 and September 1995.

Our Culture: Our Future Report on Australian Indigenous Cultural and Intellectual Property Rights

In 1997, the Aboriginal and Torres Strait Islander Commission and the Australian Institute for Aboriginal and Torres Strait Islander Studies, commissioned Terri Janke, then of Michael Frankel & Company, Solicitors to prepare an independent report on Indigenous Cultural and Intellectual Property Rights. The Report was released in 1999 and is titled *Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights*. The report found that:

- Indigenous Australians have a comprehensive view of culture. Indigenous Cultural and Intellectual Property includes literary, performing, artistic works, scientific, agricultural, technical knowledge, all items of movable cultural property, human remains, immovable cultural property and documentation of Indigenous people's heritage in archives, films, photographs and all forms of new media.
- Within Indigenous Australian groups, there are consistent principles underlying the ownership and control of Indigenous Cultural and Intellectual Property relating to communal ownership, cultural integrity and consent procedures. However, the Australian legal framework limits the ability of Indigenous people to control their Indigenous Cultural and Intellectual Property.
- There has been an increase in demand for Indigenous Cultural and Intellectual Property and Indigenous Australians are concerned that in light of these new demands and new technology, their cultures are being exploited beyond their control. Existing intellectual property laws and cultural heritage laws do not adequately protect Indigenous interests.
- Indigenous peoples have fundamental rights, which need to be recognised in order for them to protect and maintain their cultures. Such rights include the right to own and control Indigenous Cultural and Intellectual Property and the right to be recognised as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the past, or developed by them in the future.
- A comprehensive and coordinated approach to protection is needed - an approach that is developed in full consultation with Indigenous Peoples - and administered under the control of Indigenous people. To this end, the *Our Culture: Our Future Report* lists a range of proposals for recognising these rights including changes to laws, developing sui generis legislation (NB see legal section), administrative systems, monitoring and collection systems; developing cultural infrastructure and development of protocols and codes of ethics.

mina mir lo ilan man - proper communication with Torres Strait Islander people

This handbook was published by the Queensland government, as a companion to protocols for consultation and negotiation with Aboriginal people. Queensland is the state in which the Torres Strait Islands are situated, and has provided the lead in acknowledging the separate and distinctive cultural identity of Torres Strait Islanders, whether they reside in their homelands or in mainland Australian communities.

Section 1 of the handbook gives a brief outline of traditional Torres Strait Islander societies, pointing out that the people are of Melanesian origin, and that sorcery and supernatural power were two important elements of the cultures, essential to the success of daily pursuits such as gardening, hunting and sailing. Kinship and reciprocity were sustaining principles of Islander social structure. Trade was carried out with communities in New Guinea and Cape York. Languages were either Papua New Guinean in origin (Meriam mir language, spoken in the Eastern Torres Strait) or Aboriginal in structure, with Melanesian elements (Kala Lagaw Ya or its dialect, Kala Kawaw Ya, spoken in the Central and Western Torres Strait). The history of colonial contact is outlined, and a profile of the Torres Strait today is given, along with a reference to local and regional organisations.

Section 2 is devoted to outlining 'issues affecting intercultural communication', emphasising the importance of understanding others' social systems, and in the case of the Torres Strait, the way secular and spiritual matters are interwoven. Interpersonal skills are an important part of the equation, assisting in the use of communication techniques which will help in dealings with Torres Strait Islanders. These are approached under the headings 'listening', 'questioning' and 'language'. Consultation and negotiation strategies are outlined, and summarised in the concluding paragraph. Importantly, "The outsider has a participatory role, not a controlling role".

Repeated throughout the handbook is the maxim that relationship building is an important part of communication and negotiation in the Torres Strait.

Taking the Time: museums and galleries, cultural protocols and communities

A resource guide compiled for Museums Australia Queensland, this document provides advice, case studies and resources for community museums and galleries working with culturally diverse communities including Indigenous communities.

This publication is an easily accessible document, which uses case studies as an important method for getting across information under the headings: cross-cultural communication; protocol tips; and policy guidelines for museums and Aboriginal and Torres Strait Islander communities. These are contained in Indigenous ways, the title of the first section, which is followed by Multicultural ways.

Some of the key words used in this document are 'awareness', 'sensitivity', 'recognition', 'acknowledgement', all concepts which require an outward focus, and an ability to make contact with life outside the personal comfort zone. The importance of communication and consultation is also stressed, as is the value of taking time to establish trust.

The protocol tips in Indigenous ways stress the diversity of Aboriginal and Torres Strait Islander communities. Issues such as secret/sacred information and objects, human remains, ceremonial business, the stolen generations, ownership and copyright, and also Reconciliation are covered.

Guidelines for museums include material on museum activities, collections, management and staffing, intellectual property, human remains, and restricted material. Some case studies follow, illustrating the topics covered.

Previous Possessions, New Obligations

This document, published as a recommended policy guide by Museums Australia, the professional association for museums and museum workers, recognises the inherent interests of Indigenous Peoples in their cultural property. Ownership of cultural heritage is a fundamental issue which museums have begun to address.

There are detailed policies as well as principles in this document which are meant to guide Australian museums in framing their own procedures for dealing with Aboriginal and Torres Strait Islander people and their heritage, over a full range of activities. This guidance reflects the steps being taken in countries such as Canada in relation to First Nations or native peoples. Museums Australia recognises that in Australia, Indigenous Peoples have primary rights in relation to Indigenous cultural material, and museums support the right of Aboriginal and Torres Strait Islander people to self determination in respect of cultural heritage matters.

Such ownership of cultural property however, does not always mean repatriation, or return of material to communities. In some cases, meaningful relationships

have been established between museums and Indigenous communities which have resulted in the agreed caretaking of items by the museums concerned. The moral obligation of the museum however is to consult with the relevant communities, especially where sensitive material is concerned.

The guiding principles in this document are articulated under the headings: self determination; management and collections; access to collections and information; assistance to Aboriginal and Torres Strait Islander communities; employment and training and policy formulation. Detailed policies are framed within the principles outlined. A Plain English summary of the document, including explanation of terms and a number of case studies, has been prepared.

Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services

This is a slim volume which packs a punch, and is an excellent guide for use by any collecting institution, including the information services sector it is directed towards. It was adopted after an extensive consultation process at the December 1994 conference of the then Aboriginal and Torres Strait Islander Library Resource Network (ATSILRN), and finally presented at the 1995 conference of the Aboriginal and Torres Strait Islander Library and Information Resource Network (ATSILIRN).

The protocols follow a short introduction and preamble, and are listed under headings which include: 'content and perspectives'; 'intellectual property issues'; 'accessibility and use'; 'description and classification of materials'; 'secret or sacred materials'; 'offensive materials'; 'management' and 'staffing'; 'education and training'; 'awareness of Aboriginal and Torres Strait Islander peoples and issues'; and 'copying and repatriation of records'. The protocols are followed by a chapter on recommendations for implementation.

As with natural history museums, libraries and archive services contain material collected in the past, which may no longer be appropriate for public view. These institutions are also more likely than other types of cultural institutions to hold material which is offensive to Indigenous Peoples, given their brief to collect material written by Australian authors. Libraries are not permitted to censor written material according to the views expressed within them, except in extreme cases, and at the behest of an external authority. Therefore there will always be sensitive material available in libraries. It is the management of this material which requires a careful and discerning approach.

ARTISTS, ART WORKS,
EXHIBITIONS, REPRODUCTION,
RESEARCH, MANAGEMENT,
FUNDING

PART 2: Protocols

40

“But I must ask for your patience if you wish to include Aboriginal people in cultural heritage partnerships. We have a lot of catching up to do and we need to think deeply about the way forward. For the first time since the invasion, we are in the position to make decisions about our past that will affect our future survival. Please do not leave us behind in your haste to meet your own deadlines. We have been here for thousands of years, and if we are to share the next few thousand years together, then we must work closely and accept the time it takes to achieve joint aims.”

Matilda House, Canberra ACT, 1995³⁸

8 Principles

The paragraph below is taken as a starting point for the principles by which protocols for working with the Indigenous visual arts sector may be approached. This excerpt from the report of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities at its 46th Session, the 1994 Draft United Nations Declaration on the Rights of Indigenous Peoples, is cited in the Aboriginal and Torres Strait Islander Commission’s commissioned report *Our Culture : Our Future*³⁹. The paragraph in question states that:

“Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the property of fauna and flora, oral traditions, literatures, designs and visual and performing arts.”

These rights and entitlements apply to Indigenous Australians and are pivotal elements of the principles which underpin protocols for working with Indigenous visual artists and the art works they produce.

These principles may be outlined as follows⁴⁰:

1. *all Australian Indigenous Peoples have the right for the values, social systems, and languages of their cultures to be respected;*
2. *all Australian Indigenous Peoples have the right to retain control over their cultural heritage, to regard it as their intellectual property, and to protect, manage and benefit from its use;*
3. *the art of Australian Indigenous Peoples, including literary, performance and visual expressions, is part of their cultural heritage, and has the right to be protected as intellectual property; and*

³⁸ Matilda House ‘Welcoming address’ in *Creating Heritage Partnerships*, a selection of papers from the Creating Heritage Partnerships Conference 1995, National Museum of Australia, Canberra, cited in *Taking the Time, museums, galleries, cultural protocols and communities*, Museums Australia Inc (Qld), 1998, p 23

³⁹ Janke, Terri., *Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights*, AIATSIS and ATSIC, 1998

⁴⁰ NSW Ministry for the Arts, Indigenous Arts Reference Group, *Indigenous Arts Protocol: a guide*, March ‘98 - used as a basis for the above principles.

4. *the art of Australian Indigenous Peoples as a marketable commodity, is a major contributor to economic and cultural wealth, and the international recognition of the Australian nation, requiring acknowledgment and support by government for its protection and maintenance as cultural heritage.*

9 A framework for protocols

Protocols provide a means of complying with the customs and cultural value systems of a particular situation, group or culture, in order to acknowledge and respect the situation or people involved, and to ensure that negotiations and transactions are able to be undertaken in a spirit of cooperation and goodwill. The importance of respecting the protocol requirements of every cultural group involved in collaboration and transactions should be acknowledged. In Australia, protocols relating to the colonising and dominant culture are well known and have permeated the social structures and systems of everyday life, for all, including Indigenous Peoples. There is far less awareness, knowledge and regard for the cultural systems, contexts and operating modes of the original cultures of Australia.

From a practical perspective, if protocols were followed, there would be fewer opportunities for misunderstandings to arise or for offence to be caused by either party, and it is more likely that communication and transactions between different cultural groups would be successfully undertaken. If genuine attempts are made to follow the guidelines provided, it is less likely that breaches of protocol will cause offence.

Customs and protocols vary widely across the many and diverse communities of Indigenous Peoples throughout Australia, so it is impossible to be prescriptive or to present universal rules for transacting with Indigenous Peoples and communities. Nevertheless, there are some fundamental frameworks within which to work - in general - and with regard to the Aboriginal and Torres Strait Islander visual arts sector.

Examples of some specific ways of approaching Indigenous cultures appropriately are outlined below:

1. *respect should underlie verbal and written communication with and about Indigenous Peoples. The words "Aboriginal", "Torres Strait Islander" or "Indigenous" should always be capitalised, as are such adjectives as "Australian", "Fijian", "Irish" or "German";*

2. *it is offensive to use acronyms or abbreviations in writing, or to refer to Indigenous Peoples. Terms such as Aboriginal and Torres Strait Islander should be used in full and not shortened to acronyms like "ATSI". Abbreviations such as 'abo' are offensive and hurtful;*
3. *for many Indigenous Peoples, reference to "tribes" has connotations of the anthropological observations and imposed European value systems of settler/colonisers. Some Indigenous Peoples are comfortable with the use of this term. Others find it offensive and outdated, and in general, the use of such defining terms as "language group", "clan group" or "nation" is recommended;*
4. *outdated terms such as "half-caste", "full blood", or "quadroon" are offensive. They hark back to the language of assimilation and other discredited policies of cultural eradication. The Indigeneity of Aboriginal and Torres Strait Islander people is their birthright through ancestral links to their country, their cultural heritage and their people. It is not a "part" birthright;*
5. *related to the previous point is the practice of questioning Aboriginality or Indigeneity because of visual appearance. There are subtle and implicit insults in this practice, which touch on such issues as: questioning of the particular person's integrity; non-recognition and thus invalidation, of the particular person's intrinsic identity; and an implied ascendancy of white lineage;*
6. *reference to Indigenous cultures as if they exist only in the past is offensive. Culture is a living and evolving entity, and cultural heritage is being created now and for the future, as well as being an endowment of past generations. The terms "traditional" and "contemporary" are not synonymous with concepts of past and present. Traditional techniques may be used in a modern setting to create contemporary art works; and*
7. *it is courteous to acknowledge the Indigenous custodians of the country upon which substantial gatherings of people and significant events are taking place. Even the briefest acknowledgment is a mark of respect and brings the awareness of the original connection to land to the occasion. A simple format for such acknowledgment could be as follows "I wish to acknowledge and honour the custodians of this land, the "....." people", or "I would like to pay my respects to the traditional custodians of this country, the "....." people.*

10 Communication, consultation & consent in the Indigenous visual arts sector

10.1 Consultation

Proper consultation is important in any planning for activity involving another group. Only by consulting, is it possible to find out what others are thinking and to find ways of achieving a mutually satisfactory outcome. It is not possible to know what another cultural group thinks about a process or a project without two-way communication where each group:

- is aware of the way their own culture affects the way they see the issue;
- endeavours to understand, and build awareness of the other culture; and
- patiently unravels misunderstandings which arise out of cultural difference.

Finding the right people within a community to speak to, is equally important. Indigenous communities, whether regional, urban or remote, have appropriate organisations and individuals to approach for specific purposes. For initial inquiries and contacts, consult any of the following three directories: The Black Book - Indigenous Arts & Media Directory; ATSIC's 2000/01 Visual Arts and Crafts Resources Directory; or the National Directory of Aboriginal and Torres Strait Islander Organisations.

It is important that those who approach Indigenous communities or individuals do not become caught up in local politics, or feel constrained to act on the instructions of a particular group. If in doubt, confirmation on what course to take should be obtained from Indigenous liaison units within the relevant government ministries or departments.

Be aware of the importance of gender divisions of responsibility and knowledge in many Indigenous communities. In relation to art, both men and women in many communities have their own custodial responsibilities in relation to land, Dreamings, and the way these are expressed through performance, designs and other artforms.

For further information on how to consult with Torres Strait Islander communities, look for the 1998 Queensland government publication (Department of Aboriginal and Torres Strait Islander Policy and Development) *mina mir lo ailan man* - proper communication with Torres Strait Islander people. The complementary publication on

Aboriginal consultation is also helpful. This document is titled protocols for consultation and negotiation with Aboriginal people.

10.2 Consent

Consultation with a community or group of people is not simply a formality. Unless the project being undertaken is mandatory, consultation is required as a precursor to consent for it to proceed. It is not appropriate to have decided before consulting the Indigenous group or person involved, that the activity is to proceed, or that its structure or format is established. The idea may be a good one - from an external viewpoint. Consultation establishes the internal, cultural perspective, and it is important to accept that it is this perspective which should determine the appropriateness of a course of action.[16. research in the Indigenous visual arts sector]

With regard to the process of obtaining consent:

- allow time (perhaps more than one meeting) for communication of a proposal;
- allow time for a decision to be made;
- remember that decisions will be made on other bases than the ones brought from outside the community - different types of knowledge operating in Indigenous communities may conflict with the requirements of a project;
- be prepared to take 'no' for an answer (but don't take it personally);
- respect the views of all factions within a community, and ensure that consent comes from the appropriate quarter, for a particular activity or project.

When permission is required from a community for the reproduction of designs or artwork of a deceased artist, for permission to use that person's name or image, or for assistance with any visual arts matters requiring consent, contact the art and craft centre in the first instance. The request will then be referred to the relevant organisation or community members.

10.3 Visiting communities

Indigenous communities like to know who you are connected with, and how you fit into familiar networks. Trust can be built through these people links, and strengthened through the way further transactions are undertaken - for example whether:

- care is taken with communication;
- promises are kept;
- the concerns of the community are taken into consideration; or
- the visitor just disappears into the sunset after gaining whatever he or she wanted.

When a visit to a community is planned therefore, it should be kept in mind that it is not like an impersonal visit to a tourist resort. Personal connections will be made, and should be honoured and respected.

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

Allow time for this to happen - don't leave it until the week beforehand, especially if this is a community you have never visited before. In Queensland, contact the Cultural Heritage Branch of the Department of Environment. To visit Aboriginal lands in the Northern Territory, or Western Australia, an approach may be made through the appropriate Land Council (such as the Central Land Council in Alice Springs) or the local community council. In the visual arts sector, it is advisable to contact the local Art and Craft Centre for assistance.

Give careful consideration to the fact that remote area communities have busy lives of their own. People may enjoy the occasional visitor, however a succession of visitors, all intent on their own research requirements, can be an imposition. Be sure that a visit to a community is necessary - it can be tiresome to be constantly observed, and the subject of scrutiny or enthusiasm. If it is personal interest which draws you to a remote community, there are many really great tours available, conducted by the communities themselves. For visual arts-specific interest, there are very good operators, with trusted connections to communities, conducting personalised tours to remote areas. They will arrange permits and all other requirements. Importantly:

- avoid visiting at times of the year (in the central desert, it's often summer vacation time) when ceremonial activity is likely to be in progress;
- avoid visiting when responsive ceremonial activity such as a funeral, is taking place (the whole community becomes involved in sorry business, and unless you

are invited as a personal friend, your visit will not necessarily be welcomed);

- remember that cultural activity is not leisure time activity for Indigenous people (your curiosity and interest in ceremonial 'business' is of no consequence to them - their community focus and earnest application to ceremonial requirements is of paramount importance).

11 Works of art Approaches to Transactions involving works of art, within the Indigenous visual arts sector

There are many situations where Indigenous works of art may be required. Works of art may be loaned, commissioned or purchased for inclusion in an exhibition; purchased or loaned as additions to private or public collections; purchased for resale in a commercial outlet; purchased by private individuals for gifts; or incorporated in conference or festival activities.

11.1 Purchasing Indigenous art works

purchase from art and craft centres

There is an extensive network of art and craft centres in all states which are operated at either Board or staff level by Indigenous people. Working with these centres directly, ensures authenticity and provides a direct link back to the artist. It is also an assurance that the community and the artists are supported by the sale of art works. A list of art and craft centres is attached at Appendix 3.

why bypass art and craft centres, if you wish to support Indigenous art?

It is unacceptable to deliberately approach remote communities or artists directly, in order to bypass art and craft centres. This may be a cheaper option, but consideration should be given to the fact that art and craft centres have worked at creating infrastructures for the production of art and the professional development of artists, and these infrastructures also support wider activity in the community. It would be especially prejudicial to the wellbeing of the Indigenous visual arts sector if a direct approach involving access to large numbers of works of art took place, as the direct purchase of such works would upset the equilibrium and balance of the community's production, and also affect the financial viability of the centre.

Q (interviewer) “What happens if people from outside come in with no permit and ask the artists to paint for them?”
 A “We can’t let that happen, everything has a cultural channel... Other artists, not so important can work with someone else if they want to. Outside the community. They, they own boss. Here in Lajamanu they paint for the art and craft centre.”

Jimmy Robertson Tjampijimpa, Lajamanu, reported in Australian Indigenous Art News⁴¹

reputable dealers and galleries

There are many reputable dealers and galleries in Australia, and a wide range of Indigenous art is offered on the market through these commercial enterprises. Such dealers and galleries are usually members of industry associations such as:

- the Australian Commercial Galleries Association, which was formed 25 years ago to establish benchmarks of commercial practice in the visual arts;
- the Indigenous Art Trade Association, established in January 1998, which endeavours to support the Indigenous visual arts sector, while engaging in commercial activity.

labels of authenticity

Responsible purchasing of Indigenous art, is based on knowing the source and provenance of the work, and/or looking for the Label of Authenticity, recently launched by the National Indigenous Arts Advocacy Association (NIAAA). Buying products which display this or other authenticating marks, ensures that Indigenous artists are being supported and that authentic Indigenous product is being purchased. Other authenticity marks do operate, at regional and gallery level. Individual art and craft centres, and galleries such as that of Papunya Tula Artists in Alice Springs produce authenticity certificates specifically for the artists connected with the particular enterprise. Desert, the regional body representing artists and art centres in Central Australia, recently introduced a regional label.

Some retail outlets display large numbers of items which look as if they have been mass produced. Chances are that they have been, and very often, not by Indigenous artists. The purchase of such objects is a disservice to Aboriginal and Torres Strait Islander artists, unless it can be ascertained that they have been designed by Indigenous artists and that royalties are being paid to the communities or individuals concerned.

Issues of authenticity and reproduction technologies are raised through the project The House of Aboriginality, and related information can be accessed on the internet at http://www.mq.edu.au/house_of_aboriginality

CASE STUDY 1: making didgeridoos: c.1999

Reported in Australian Indigenous Art News in 1999, the story of a Katherine supplier “who sends hundreds of plain didgeridoos to galleries all over Australia.” Who knows who gets to paint them? At least one non-Indigenous person is known to apply designs to them, in Darwin.⁴²

A number of individual artists will undoubtedly decide not to use a label of authenticity on their own work, and this is their prerogative. As artist and curator Brenda L. Croft states:

“With the greatest respect for NIAAA’s intentions, I feel that an aspect of the Label of Authenticity is reminiscent of the old ‘Dog Tag’ system.....As it currently stands, NIAAA’s position on the Label is that the entire Indigenous visual arts/cultural industry requires a blanket approach. This position overlooks the fact that a mass produced item in a shop is not the same thing as a one-off, or limited edition handmade work hung in a gallery.”

Brenda L. Croft, Indigenous curator, artist & writer 2000⁴³

In the case of well known artists, the work will usually be available through reputable dealers and public galleries, and it is in the interests of the purchaser to source work only from reputable outlets.

11.2 Indigenous art works in exhibitions

Indigenous art and craft centres and cooperatives

There is an extensive network of art and craft centres and cooperatives in all states which are run at either Board or executive level by Indigenous people. Part of the brief of these centres is to ensure professional development opportunities for artists, and staff at the centres will assist in sourcing works for exhibition if it is appropriate and possible to do so. Factors such as the significance of the exhibition, and whether the work/s are to be loaned or consigned will have a bearing on the ability of the centre to assist. A major benefit of working with these centres directly, is the assurance of the works’ authenticity. A list of art and craft centres is attached at Appendix 3.

⁴¹ *Australian Indigenous Art News*, Volume one, No 2, p 33

⁴² *Australian Indigenous Art News*, Vol 1 No 2, p 16

⁴³ Croft, Brenda L. in *Artlink* Vol 20 No 1, 2000, p 85

commercial galleries

Many Indigenous artists in remote, rural or urban environments are represented by commercial galleries. Indigenous art centres in the cities, or curators in major galleries, will frequently be able to direct those wishing to include works in exhibitions to the appropriate dealer or gallery for contact with particular artists.

borrowing from public or private collections

Works of art may be borrowed from public or private collections, for inclusion in an exhibition. If borrowing artists' work from a collection to include in an exhibition, it is courteous to inform them of the inclusion of their works, and to forward to these artists copies of reviews, catalogues or other publications which feature their work.

When work is on loan to an exhibition, the artist's permission is necessary before images can be used in catalogues or for promotional purposes, such as invitations or to accompany reviews in newspapers or magazines. Large galleries will sometimes arrange licensing rights to reproduce images, which may be assigned for use in catalogues - but it is current accepted practice to also request permission from the artist involved. If the catalogue designer wishes to use images in other than their complete form - that is, if cropping of the images, or other changes, are desired - it is mandatory for the artist to be involved in negotiations, and that permission be obtained.

exhibits for conferences, festivals or other short term events

Requests to galleries or artists for exhibits to accompany conferences, festivals or other short term events can be an imposition. It may be commendable to support Indigenous art in a public forum, but it is usually those who do not work in the visual arts sector, who request 'displays' of art to accompany a short term event. This is often suggested on the basis that such an event will be advantageous to the artist, gallery or the Indigenous arts, from a promotional perspective. Such proposals are often made without knowledge of issues such as security, professional display mechanisms or insurance, and without an awareness of the scope of preparatory and maintenance work involved.

It is sometimes suggested that art works may be sold at events like these. If it is a commercial proposition, or there is adequate funding to support such activity and to provide recompense for the considerable effort and work involved in producing such an exhibit, then the request

may be reasonable. Professional art workers however will usually advise that it is difficult to sell work in a setting other than a visual arts focussed environment, and even more difficult to sell to a passing audience in a short period of time - at least in Australia. In Japan for instance, as in other countries, it is not unusual for exhibitions to be set up for a very short period - two days is not uncommon. Much depends on the prevalent dynamics and protocols of local art marketing.

11.3 reproducing Indigenous images and designs

Changes in technology have made it easier to reproduce images, designs and visual symbols; however there are both ethical and legal issues to be taken into account before such reproduction can occur.

appropriation, fraud and fakes

Public representation of copied designs or images as original, has long had serious legal implications under most Western law. There are additional issues at stake in Indigenous cultures, involving ceremony, custodianship and the sites relating to specific designs. The use of such designs or their appropriation without permission, is not acceptable. If the inclusion of Indigenous designs in a project or publication is desired, using existing art works or designs, the use must be negotiated with the artist or community involved. Usage may be subject to royalties and copyright fees.

Further detail on intellectual property rights follows in the legal section [Part 3], and *Our Culture: Our Future*⁴⁴ provides an extensive examination of the issues surrounding Australian Indigenous cultural and intellectual property rights. Refer to [11.2 borrowing from public or private collections] for guidelines about permission for use of images in catalogues.

reproduction of images in publications

For permission to reproduce designs or images in catalogues or other publications, contact Viscopy in the first instance (see Appendix 5 for contact details) as many Indigenous artists are now registered with this agency. Viscopy is the Australian and New Zealand copyright collecting society for visual artists, and as such can arrange permission to reproduce images, or provide information on other collection agencies if necessary. Other collecting agencies and their contact details are listed at Appendix 4.

⁴⁴Janke, Terri, *Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights*, AIATSIS and ATSIAC, 1998

**IMPORTANT NOTE FOR ARTISTS:
COLLECTION AGENCIES**

Secondary reproduction fees (payable when published images are photocopied, and owed automatically to the copyright holder - usually the creator) cannot be made available unless the copyright holder is a member of a collection society, therefore all visual artists would be well advised to join one. If fees have been paid as a result of photocopying, they remain with the collection society until the copyright holder becomes a member. Viscopy is the visual arts collection society.

Artists should also note that Viscopy does not provide the image to be reproduced, and that it is often difficult and costly to obtain an image from large public galleries, even when the artist has given permission for reproduction. Indigenous artists would be well advised to make the purchase of art works conditional on supply of transparencies to themselves or their agents, in order to avoid delays and hold-ups in publication transactions.

12 Artists Approaches to working with Indigenous artists

12.1 Who are Indigenous artists?

The questions continue to be asked - what is Indigenous art? Who are Indigenous artists? The answers are complex yet simple. Indigenous experience is diverse - people have been moved from country; some have experienced the removal of their children; urban life is a given for some; others continue to live in remote regions, close to ceremonial tradition and their own lands. The circumstances of artists reflect this diversity.

Art work which is produced by an Indigenous person is Indigenous art. The content reflects the life situation of the particular person - the search for cultural identity; a political stance; a requirement to reflect ceremonial responsibilities in the work produced. The efforts made by groups of artists in various urban settings, especially the work of the artists connected with Boomalli's early days has established the Indigenous position on these questions. There is discussion however, about the use of designs and symbols which evoke Aboriginality, by regional and urban-based artists searching for ways to express their own cultural experiences. Sometimes these artists will use dots (usually identified with Central and Western Desert art) or rarrk (the lines and cross hatching used by Top End artists). The Australia Council's Aboriginal and Torres

Strait Islander Arts Board has issued statements censuring the appropriation of such designs and symbols by both Indigenous and non-Indigenous artists. This issue however is not simple for Indigenous Peoples, all of whose cultures originally used ochred dots and lines as part of cultural imagery, and many of whom wish to use symbolism to make a cultural statement. There is a fine line between such exploration, and appropriation of others' identities and cultures.

challenging identity

How should a challenge to an artist's Indigeneity be dealt with? The circumstances of Indigenous life, which mean that many artists live in communities away from their heritage origin, or may not even know their place of cultural origin, mean that artists may be challenged about their identity. The ATSIC definition of Aboriginality requires that:

- the person identify as an Aboriginal;
- the person be of Aboriginal descent;
- the community of origin or the community in which he/she resides accepts the person as Aboriginal

Organisations dealing with such a challenge will be required to request the artist in question to provide evidence that they meet these three conditions.

working with Indigenous artists

Non-Indigenous and Indigenous artists, art workers or other interested parties may wish to:

- collaborate with an Indigenous artist;
- include works by an Indigenous artist in an exhibition;
- organise an exhibition of work by an Indigenous artist or group of artists;
- include an image of a work by an Indigenous artist in a publication;
- include an Indigenous artist as a speaker on a panel;
- invite an Indigenous artist to address an interest group or students;
- involve an Indigenous artist as a speaker in a professional development program; or
- interview an Indigenous artist as part of research or journalistic activity.

The following item 12.2 refers to ways of working and collaborating with Indigenous artists.

12.2 Collaborating with Indigenous artists

“I love collaborative works. Artists reflect their human relations, their lives, what’s going on around them. You’ve got Mabo happening at the moment, trying to find a decision on who owns Australia through the legal system, and that causes a lot of friction and problems within the community. We need to help positive interaction between Aboriginal and non-Aboriginal as much as possible. Dolly and Anne are a prime example of how people can work together”

Kerry Giles, Indigenous artist and curator, 1993⁴⁵

contacting Indigenous artists

Artists may be contacted through various agencies - art and craft centres, or the galleries which represent them. It is important to remember that a partnership with an Indigenous artist is different from other artistic collaborations, in that it is usually a culturally charged activity which the artist may find too constraining or pressured, and may not wish to be part of. However, there have been very successful collaborations where each artist has had a close understanding of and respect for the other’s perspective. The approach to an artist may be met with enthusiasm or lack of interest - as with any artist, the response will depend on the individual concerned.

personal relationships with artists

A personal relationship with an artist or group of artists may result in collaborative activity, and in the ability to easily negotiate access directly with that artist. Under these circumstances, contact with an artist living in a remote community may not need to be arranged through an agency such as an art and craft centre. However, the agreement or understanding entered into with the particular artist/s does not necessarily extend to other artists or communities.

CASE STUDY 2: Collaboration c.1994

During the 1994 Adelaide Festival, The University of South Australia Art Museum hosted the exhibition Ngurra (camp/home/country). It consisted of a collaboration by Warlpiri artist Dolly Nampijinpa Daniels and non-Indigenous artist Anne Mosey. The very different cultural background of these two artists, who had become good friends over the years, was highlighted by the nature of the installation they prepared - a reconstruction of two living spaces placed side by side. In Anne’s case, this included

furniture, rugs and appliances, and Dolly built a tin and bough shelter like the one she lives in, at Yuendumu in the desert country of Central Australia.

Both artists’ thoughts and reminiscences about the way the exhibition came together and the way they worked together, as well as their perspectives on the work itself are separately transcribed, as spoken to Petronella Vaarzon-Morel. Petronella also wrote a separate piece for the catalogue, as did Kerry Giles, an Adelaide based, Ngarrindjeri curator (now deceased). The collaboration was clearly a positive and heartfelt experience for both artists, and was part of a long-established relationship which had grown through their work together in Yuendumu.

Erica Green, Director of the Art Museum comments “From the Art Museum’s perspective we found the exhibition, particularly working with Anne and Dolly, a very rewarding and educational experience. The exhibition and interface with Dolly and Anne enhanced my appreciation and understanding of Aboriginal culture enormously ... Dolly and Anne had a close understanding and respect for each other - and I think this is partly the key to their collaborative success. They were both keen and willing to impart their culture to others - how and why they did things.”

A number of Warlpiri people and other Indigenous people came down to Adelaide for the Festival, and the Art Museum provided a bus for them to attend the opening of the exhibition.

Erica Green continues “It was the first time they had seen Dolly and Anne’s work and that was very important as it brought Anne and Dolly’s collaborative art practice back to that community. At the opening everyone very animatedly discussed the work. They sat on the chairs, in the humpy - and we served them drinks and food. We got some great photos from the opening.

Generally the exhibition was very well received. There was genuine interest and a desire to understand the other. I think the nature of the installation - Dolly’s humpy against Anne’s domestic kitchen was a very powerful and dramatic statement.⁴⁶”

12.3 Inviting Indigenous artists to exhibit

locating Indigenous artists

Locating Indigenous artists and identifying which artists might be most appropriate for inclusion in an activity or an exhibition can be daunting for those unfamiliar with the sector. The art and craft centres or galleries referred

⁴⁵ Giles, Kerry, interview with Wolfe, Ross, for *Collaboration, in ngurra (camp/home/country) dolly nampijinpa daniels and ann mosey*, exhib. cat., University of South Australia Art Museum, 1994, p 28

⁴⁶ Green, Erica, pers. comm. May 2000

to in [11.2] above, may facilitate contact with an artist whose work has been identified as suitable for a particular exhibition. They may also assist with selecting an artist whose work would relate well to the particular exhibition. Most artists would prefer negotiations to be conducted through the art and craft centres or galleries representing them.

It is always an advantage, as well as a courtesy, to have engaged in a degree of research which ensures some relevant background knowledge. The art and craft centres or curators involved, can then provide an appropriate level of information as part of their roles in assisting the process. This applies also to those who wish to write about Indigenous art, or otherwise involve themselves in this field [12.5 interviewing Indigenous artists].

exhibition fees and artist fees

The payment of exhibition or artist loan fees was developed in 1983 as a recognition of artists' potential loss of income while their work was on exhibition in a non-selling context. The Code of Practice for the Australian Visual Arts and Craft Sector⁴⁷ recommends payments to artists, both Indigenous and non-Indigenous, in various contexts. The Code states "Exhibition fees should be regarded as payment solely for a work's inclusion in an exhibition. They should be a separate and distinct payment from Artist Fees (for time spent creating a work), travel per diem and payments to cover material costs."

12.4 Indigenous artists as public speakers

Many Indigenous artists are experienced public speakers, and it should not be difficult to find an artist to address an audience or lead a workshop. However, like other artists, their income is limited and the courtesies involved in payment, transport, childcare and other services which will facilitate the process, should be carefully considered before the artist is approached. Artists - including visual artists, performers, dancers - love their work and take professional pride in doing it well. However, although art may be a leisure activity for the general public, it is a professional activity for artists, and a fee should be offered for their services.

12.5 Interviewing Indigenous artists

Artists may be interviewed as part of preparatory research for exhibitions, as part of academic research, or for journalistic purposes in a media setting.

research

Detailed outlines of ethical approaches to research, and collaboration entered into with Indigenous people, can be sourced from most Universities, all of which have ethics committees relating to research, and some of which have particular guidelines relating to research involving Aboriginal and Torres Strait Islander Peoples.

It is most important to understand that any information gained in these situations should be viewed as the intellectual property of the person interviewed, and that any benefits accrued or attribution must include the individual or community concerned [16 Research].

It is also courteous to engage in prior background research, before any approaches to communities or individuals for research purposes take place. This saves time for all concerned.

journalism

Many of the same principles should apply to interviews undertaken for journalistic purposes, depending on the extent of the interview and the information divulged. In the area of journalism, as well as in regard to exhibition preparation [12.3 inviting Indigenous artists to exhibit] it would be considerate to carry out prior research, thus providing an information base from which to work, and avoiding unnecessary additions to the workload of artists, art and craft centres or curators (see case study Background briefing below).

CASE STUDY 3: Background briefing c.1997

X, a freelance journalist from Melbourne decides that it would be a good idea to write an article about Indigenous art, following headline news about alleged Indigenous art fraud. He sees the name of Y, an Indigenous curator, in media reports and tracks this person down, proposing an article to which the curator might offer comments. The curator agrees to comment, but after some time, realises that the journalist has no knowledge of the issues, nor of Indigenous art or artists, and is using the conversation as a research resource rather than eliciting a response to topical issues. Curator Y suggests journalist X do some background research before continuing, and contacts Y at a future date, to continue the conversation. Journalist X does not contact Curator Y again, and the proposed article never appears in print.

The representation of Indigenous Australians in the media has been a subject of discussion for the Australian Broadcasting Authority (ABA); the Media and Entertainment Alliance (MEAA) and the National Indigenous Media Association of Australia (NIMAA). The report *Our Culture: Our Future* states in 24.3 Media, that:

⁴⁷The Visual Arts Industry Guidelines Research Project, *Code of Practice for the Australian Visual Arts and Craft Sector*, National Association for the Visual Arts, 2001.

“Indigenous people consider the representation and discussion of issues of Indigenous culture and Indigenous people in the media is an important right. A submission from the Victorian Folklife Association (#5) noted the inadequacy of existing racial vilification and defamation laws and suggested there should be a code of ethics for journalists and public relations people concerning representations in the media about Indigenous issues. It was further considered necessary for journalists and reporters to be made aware of Indigenous cultural values and practices. The media should not be overlooked as they convey information to the general public.”

The MEAA has developed guidelines concerning representation of Indigenous people. Commercial broadcasters, the ABC and SBS also have self-regulatory codes.

13 Artists' voices

Three artists speak

Questions on protocol issues were put to three Indigenous artists from different cultural backgrounds, and from different parts of Australia. Here are their responses:

13.1 Julie Dowling (WA)

Julie Dowling is a Yamatji woman who lives and works in Perth, WA. Her work is increasingly recognised for its exploration of identity through treatment of human subjects, especially portraits of family. Her work has been shown internationally, in Cologne and Cape Town as well as in many contexts in Australia. It was included in Beyond the Pale: Adelaide Biennial of Australian Art 2000 and was selected for the 2000 Doug Moran Prize exhibition, to tour nationally. Her recent work Mary's Dream won the Painting Prize in the Telstra presents the 17th National Aboriginal and Torres Strait Islander Art Award, 2000, in Darwin.

Her work was featured in Ceremony, Identity and Community at Flinders Art Museum in Adelaide, as part of the 1998 Adelaide Festival, and in 1999 the show toured to South Africa as part of a collaboration between Flinders University, the Robben Island Museum and the South African National Gallery where it was presented with the African exhibition Isintu. Dowling's work was selected for the 16th Telstra National Aboriginal and Torres Strait Islander Art Awards exhibition in Darwin, at the Museum and Art Gallery of the Northern Territory, and was included in Generations: The Stolen Years of Fighters and Singers, Lawrence Wilson Gallery, University of Western Australia. Her work is held in many major collections.

Dowling is in demand and warmly appreciated for presentations about her artwork to tertiary students and in other public fora. Her ability to connect with people creates a strong foundation for her work.

1. What area of the visual arts do you practise, Julie?

I mainly paint portraits and sometimes incorporate landscapes and historical scenes in them.

2. In your years of practising as an artist, what would you say has been the most rewarding event?

My work was chosen to be in the Doug Moran National Portrait Prize for 2000. I understood that not many of my people have been represented before and it is a great privilege to be chosen because it means that my own themes and values, which I share with my family and community, will be seen by many people throughout Australia in a National touring exhibition.

3. What things have frustrated you?

Tokenism and racism in the artistic 'Industry'...ignorance and stereotypical generalisations about Aboriginal people in the arts...careers in education and the access to self-expression from an early age are still denied to my people. Our language and culture is still misunderstood and exploited.

4. Have you been involved in collaborative ventures with non-Indigenous artists - what were the most satisfying aspects of this collaboration?

The most rewarding thing with collaboration is that we share and inform each other as much as the final painting informs the viewer. An equitable relationship is sometimes difficult to find. I don't like to be in the position where I do all the education and the 'cultural' content...I like to work with people who are investigating their own journeys or that of their families...I also love to work with people who have strong connection to their own traditional cultures. Collaboration on a physiological level is the ultimate reward...to find another artist who can work easily with me and I with him/her and still maintain a 'humanistic' continuity is very difficult too...

5. Have you seen any of your images reproduced without your permission? If so, what did you do? If not, what would you do if this happened?

I've never had my works reproduced without my permission and I think I'm pretty lucky so far. I do know of many who have lost cultural integrity and spiritual/cultural power when their works have been stolen or used without their permission. It is devastating because it means that we are still not free...our culture is not 'really' ours and we do not have autonomy over our future. Many don't make a fuss because they are either too afraid or don't know how to fight back through legal channels.

If it ever happened to me then I would call in the training I had in arts and copyright law that I studied at university to make the initial moves towards final litigation. I want to use the mainstream law to seek justice. Without the protection of these laws (and some still need to be amended for community cultural ownership) then our cultures will slowly turn into meaningless junk. I want a cultural future.

6. What Indigenous protocol issues have been the most important for you as a practising artist?

Seek eldership permission for any tribal/traditional-based designs or creation stories.

Never assume a generalised view (i.e. politics, lore or religion) without personal/familial regard to its long term cultural impact...

Be aware of the environmental impact of your painting materials...no toxins or chemicals that could harm the environment.

Maintain direct grassroots support from my family and local community. Without this support then cultural integrity is nil.

Respect the dead and the spirits of those who have died most recently by not speaking their names or showing their photos. Refer to them using a different culturally appropriate name.

Respect for the land and the creation myths/stories...sacred sites and elder responsibility as well as the role they must perform. Never assume that you know better or more because their spirit is closest to the Dreaming/Tjukurrpa not yours...well, not yet anyway!

7. Are there any protocol issues which you believe are common to Indigenous artists working in an urban context and those working in remote areas?

All of the above.

13.2 Banduk Marika (NT)

A member of the Rirratjingu clan of north-eastern Arnhem Land, and living and working in Yirrkala, Banduk Marika has become well known as an artist, for her linocut prints and screenprints. She is part of a family which has included important artists, and senior members of her community. While adhering to the pictorial traditions of her clan, Banduk's images are free flowing and individual in their expression. As an artist, she has sought to make links with those working outside her community and traditions, and as early as 1984, was represented in the Koori Art '84 exhibition, presented by the Contemporary Art Space in Sydney⁴⁸. She has been involved in many collaborations with other artists and studios and has undertaken a number of artist residencies including at the Flinders University Print Studio, Adelaide. She is also known for her work on various committees, and her advocacy for Indigenous artists and their concerns.

Banduk's work is held in major public and private collections, and has been included in several major exhibitions over the years, including - among many others, from the early 1980s to the present - The Aboriginal Women's Exhibition, presented by the Art Gallery of New South Wales in 1991, and toured nationally.

1. What area of the visual arts do you practise?

Printing, linocut, works on paper.

2. In your years of practising as an artist, what would you say has been the most rewarding event?

Getting the message across to people. Educating people about Aboriginal culture. Aboriginal culture is deep and it is not

⁴⁸Caruana, Wally, *Aboriginal Art*, Thames and Hudson, London and New York, 1993, p 186

just what Europeans would call 'just a pretty picture'. It is rewarding when I educate non-Indigenous people about understanding Aboriginal art.

3. What things have frustrated you?

People ripping someone else's art off without going to the family or artist for permission and without sharing the benefits with the community or artist.

4. Have you been involved in collaborative ventures with non-Indigenous artists and if so, what were the most satisfying aspects of this collaboration?

Yes. I worked with Rodney Monk and David Humphries from Sydney who transferred my artwork into community murals using terrazzo tiles. The mural is at a Sydney train station. It was a satisfying experience. They did all the right things in contracting and transferring the work.

5. Have you seen any of your images reproduced without your permission? If so, what did you do? If not, what would you do if this happened?

Yes. My work Djanda and the Sacred Waterhole was reproduced on carpets without my permission. It is an important artwork to my people and me. I was hurt that someone would reproduce it in such a way and without even asking me. We took the importers of the carpets to court. The case (Banduk Marika, Tim Payunka v Indofurn) was successful and established a precedent in copyright protection for the Indigenous arts.

6. What Indigenous protocol issues have been the most important for you as a practising artist?

Respecting and recognising Indigenous Cultural and Intellectual Property Rights is the most important.

7. Are there any protocol issues which you believe are common to Indigenous artists working in an urban context and those working in remote areas?

Respect and integrity - understanding that Indigenous cultural information is carried in art.

13.3 Clinton Nain (Vic)

Clinton Nain, of the Ku Ku (Aboriginal) and Miriam Mer (Torres Strait Islander) Peoples is an increasingly significant player in the contemporary visual arts in Australia. A well known performer for many years, before completing a Bachelor of Fine Arts at the Victorian College of the Arts in Melbourne, Clinton's work explores Indigenous cultural identity, sexual identity and the effects of colonial power structures. His 1998 show *White King Blak Queen* was presented in Brisbane and Sydney to critical acclaim and his work was included in *Beyond the Pale*, 2000 Adelaide Biennial of Australian Art. A further solo exhibition in 2000, *The Bleach is Blak* was presented by Flinders University Art Museum as part of FEAST, the annual Adelaide Lesbian and Gay Cultural Festival. Clinton's work often employs the use of household bleach applied to cloth or paper, and his FEAST exhibition statement below, outlines a rationale for the use of this innovative medium:

*White King a product of colonialism
The producer of the bleaching act
Blak Queen a survivor of the bleaching
of Blak existence
has not gone away.*

Clinton Nain 2000⁴⁹

Gary Lee, writing for the Beyond the Pale catalogue, explores Clinton Nain's bleach analogy:

In the Melbourne-born artist's recent solo exhibition White King, Blak Queen, he provokes, cajoles and possibly confronts non-Indigenous presumptions about Aboriginal art and the types of subject matter usually expected of Indigenous artists. Nain's art is uncompromising and, as in the case of White King, Blak Queen, both powerful and humorous. One work, It reigns White King 1999, features an upturned bottle of White King bleach dripping down the calico malevolently

⁴⁹ www.feast.org.au/visual_arts.html

onto a suggested black umbrella form. The toxic white covers the black but fails to penetrate or to contaminate the blackness - a metaphoric self-portrait perhaps? White king over black queen - a whitewashing going nowhere.⁵⁰

1. Clinton - what area of the visual arts do you practise?

I have studied painting, but have always been involved in performing, dancing, from when I was a little kid - and I think one is part of the other. Putting song, dance and paint together in a contemporary setting is a link back to traditional activity. With my visual work, there is often an element of performance within an installation, which will be left there as a visual reference to the whole activity. Some things are created for the specific situation, but there is usually a conceptual link with performance.

2. In your years of practising as an artist, what would you say has been the most rewarding event?

As one of a group of six artists in 1997, my work was selected for the exhibition Primavera, presented by the Museum of Contemporary Art in Sydney, to coincide with the Festival of the Dreaming (the first Olympic Arts Festival), and curated by Aboriginal artist Rea.

Another wonderfully strange occurrence was the appearance of one of my works in a National Gallery of Victoria exhibition looking at art of the sixties. I wasn't born until 1971!!

3. What things have frustrated you?

My worst frustration has been with the attitudes of the wider community and also the Indigenous community to what is and what isn't - Aboriginal or Indigenous art. For example the auction houses making pronouncements and decisions about what is important Aboriginal art by the work they might reproduce on the front of their catalogues. They mostly use images of work from artists confined to a small number of areas - whereas there are many Aboriginal groups not just one or two. These images are of course important to the people who have created them, and their cultures, but my images and their cultural origin, are important to me. This stereotypes Aboriginal people - and by allowing it, we stereotype ourselves.

4. Have you been involved in collaborative ventures with non-Indigenous artists - what were the most satisfying aspects of this collaboration?

Yes, and I find the diversity which comes with different ways of working and thinking, rewarding. And personally, I like to be involved as an Indigenous person, in groups of non-Indigenous people, so I can bring to the group, an Indigenous perspective - an input of blackness. I like to be able to get that Indigenous input into the collective work.

5. Have you seen any of your images reproduced without your permission? If so, what did you do? If not, what would you do if this happened?

Not visual works, no. But I have had photographs of my performance - in ceremonial dress and doing traditional Torres Strait Island dances - used without permission from me. I haven't seen the postcard in question, I've just been told about it, found out by chance. It's strange - I'm out there but I don't know anything about it except that the image has been used. I just let it go - too late to cry about it by the time I found out.

Actually, photographing art works with or without my permission ... I don't like it anyway - the works lose something. They never look like 'it' anymore. A work of art is one unique thing and can't really be reproduced.

6. What Indigenous protocol issues have been the most important for you as a practising artist?

The protocol issues I think of in my own work and activity as an artist are ... that I see myself as Torres Strait Islander and Aboriginal, and am aware of traditional values of my cultures. This came through my mother, who taught us respect of cultural Law and protocols. Most people in the wider community just walk anywhere, touch anything, but I never want to forget ... to be always aware of where I am and to remember my own country in relation to my present whereabouts. I want to carry a deep respect for where I am, and this has a bearing on which roles I feel free to take on, in local projects. I have refused some offers because of this ... it's important to remember who you are, and your place.

⁵⁰ www.cam.cowan.edu.au/projects/Final_Projects/2000_2/Beyond_the_pale/navigation_frames/navigation_frame_artists.htm

7. Are there any protocol issues which you believe are common to Indigenous artists working in an urban context and those working in remote areas ?

These things I've spoken about, relate to all Indigenous artists - there's personal diversity, but the sameness of the struggle.

14 Exhibitions

The display of Indigenous works of art

14.1 Presenting exhibitions of Indigenous works of art

cultural implications

The underlying rationale and cultural implications of an exhibition of Indigenous art works, needs consideration as part of the preparation process, before artists are approached, or purchase/loan of art works arranged. Whatever the reason for presenting an exhibition of Indigenous works, the needs and cultural concerns of the artist should be taken into account. The attraction of Indigenous works of art is often cultural as well as aesthetic, and it is inappropriate to take advantage of this aspect of the art works concerned without proper acknowledgment of the cultural investment by artists and their generosity in sharing it with an audience, especially in a commercial situation. If artists are present at an exhibition of their works, it is an essential courtesy to acknowledge them publicly, and to offer them hospitality and support, especially if they have travelled to be present and are in an unfamiliar environment.

CASE STUDY 4: exhibition (c.1999)

The following case study outlines a difficult situation for a group of artists from a remote community, which occurred when their work was shown at a commercial gallery in one of the capital cities (names and location suppressed).

Background and context

Gallery x was reported to be accustomed to showing Indigenous work. The work in question was on consignment, and artists had travelled a long way to the city to be at the opening of the exhibition, which included work by artists from other centres, some of whom had also travelled to the opening. In the case of the artists providing information for this case study, no assistance was received from the gallery concerned, with regard to meals or transport during their stay. In short, there was no financial outlay from the gallery, towards

the artists' presence at the event - and no imposition of any kind, on their resources.

A reasonably large crowd had gathered at the opening, blocking the entrance at the time of the artists' arrival. The artists and accompanying colleagues from the art and craft centre took the initiative and pushed through the crowd, so as to be able to stand inside. The hosts did not greet the artists, who were also not acknowledged in any of the speeches, one of which was given by a State Minister for the Arts. The artists from other centres were left to their own devices, standing outside, or sitting on concrete walls nearby. There were only alcoholic drinks available, which meant that some of the artists, in particular a number of old ladies, had nothing to drink, and nothing to eat.

Neither the gallery owners nor staff saw or spoke to the artists in question, but other people who noticed these artists inside, standing near their work, were eager to speak to them, and to ask about their work.

Protocols

What were the difficulties with this situation?

Firstly, there was little consideration shown to the artists around whom the celebration might reasonably have focussed. This would apply whether the artists were Indigenous or non-Indigenous. In this particular situation, the gallery owners were well aware that the artists had travelled a long way, and taken a lot of trouble to be at the opening. Many of these artists were senior members of their communities. Particular respect is paid to such people in any culture, at such a public event - the politician in attendance for instance, was no doubt met at the door and his activity within the event facilitated. The artists themselves felt that the gallery owners were just rude, and there is little evidence to the contrary.

The art and craft centre staff believe that personal acknowledgment of the artist is paramount. This is particularly so when the artist is present at an event. The point was made, that at this crucial period in Australia's history, when the process of Reconciliation is so important, that such events present opportunities for raising awareness of Indigenous culture, and facilitating self determination, confidence and empowerment. Art and craft centre staff also expressed the opinion that protocols relating to Indigenous peoples should be approached holistically, taking into account the artists' environment and wellbeing on every level.

Most of us, when in a host relationship towards someone from distant places would ensure that the visitor was welcomed, had all that was needed, knew where facilities

were and what was available, and were comfortable. Even if we were busy. Protocols mostly consist in showing elementary courtesy and respect for other human beings.

In the situation reported, common courtesy, respect for the people involved, and acknowledgment of the art and craft centre's contribution, was all that was required.

14.2 Curating exhibitions of Indigenous art

Indigenous curatorial input

When curating exhibitions of work by Indigenous artists it is important to involve an Indigenous curator, consultant or reference group. Most large public galleries and museums employ Indigenous curators. When this is not possible, extensive consultation usually takes place, to augment the expertise of non-Indigenous curators. In many cases the artists themselves provide the advice and consultation necessary. However, there are now - and increasingly - many other contexts in which exhibitions of Indigenous art works are generated. This is a both a great contribution to the Reconciliation process and a tribute to the extraordinary strength and significance of Indigenous art. As part of the process of self determination however, and the right to interpret their own culture, as well as to ensure that inclusions are appropriate, the involvement of Indigenous people in the process is essential.

It is possible to contact Indigenous curators, or other people involved in the arts through State arts ministries, art and craft centres (listed at Appendix 3), or through Rachel and Hope Perkins' year 2000 publication *The Black Book - Indigenous Arts & Media Directory* which lists Indigenous organisations, curators, performers and other art workers.

14.3 Viewing exhibitions of Indigenous art

Indigenous involvement in making exhibitions accessible

Access to Indigenous art means talking about it, writing about it, and displaying it. Assistance with making exhibitions of Indigenous art accessible to an audience should be sought from Indigenous artists, curators or educators. It is important that communication about exhibitions of Indigenous work is informed by direct contact and discussion with the Indigenous artists involved, or by other Indigenous Peoples who can bring appropriate cultural awareness and knowledge to the process. "Interpretation" is a contested term. After centuries of scrutiny and imposition of alien values, Indigenous Peoples insist on the right to tell their own stories and communicate about their own cultures.

accessibility means access for Indigenous people also

It is important for Aboriginal and Torres Strait Islander people to feel comfortable in galleries and resource centres where their works are shown, and this includes the environment concerned, approachable staff and where possible, Indigenous people among the staff. It is also important that cultural protocols relating to viewing are observed - sensitivity is required in dealing with the work of deceased artists, or in dealing with art works depicting deceased persons, or in negotiating gender issues.

talking about art in exhibitions

Educators and guides in art museums, whether they are volunteers or salaried professionals should not be expected to speak about Indigenous art in exhibitions, without a training session which involves Indigenous people, and an introduction to matters of Indigenous protocol.

writing about art in exhibitions

Writing about Indigenous art in exhibitions includes writing wall text and labels, writing advertising copy and media releases, and writing catalogue essays. When producing wall text and labels it is courteous to consult with the artists involved (this is usually a curatorial task), with an Indigenous reference group, with an Indigenous curator (preferably from the community involved) or with someone who has direct knowledge of the particular community or the art work in question. Many non-Indigenous curators and researchers have spent long periods in close contact with Indigenous communities and have established relationships with artists based on respect and knowledge of protocols. They may have longstanding arrangements with particular communities, in relation to research conducted or information gained.

There are conventions for label and caption text layouts in exhibition and museum settings. Within these conventions, some variation occurs, according to the work involved, the exhibition content or the cultural context. Further information on these conventions may be found in various publications on museum display. These conventions are followed with regard to Indigenous art works, sometimes with additional references to the artist's cultural identification. Extended captions or labels may contain further information to assist in making the work more accessible to a viewing audience. Some examples of these can be found at Appendix 4.

It is courteous to include essays by Indigenous curators in catalogues accompanying exhibitions, or to consult with them on appropriate ways to refer to Indigenous culture and work. Advertising copy and media releases can then confidently be based on display text and catalogue essays.

Consultation is important because of the prevalence in the past of Indigenous cultures being observed and interpreted by those outside it. It is no longer acceptable, without the input of Indigenous people, for decisions to be made about Indigenous culture and its representation. Unfortunately, this is still a frequent occurrence - accounts of situations where lectures on, or public reference to, Indigenous institutions, situations, culture, art or attitudes occur without acknowledgment of the Indigenous persons present, who may have first-hand knowledge or perspectives on a given situation, are all too frequent.

Indigenous cultures have different requirements for the communication of knowledge - Indigenous knowledge, and the right to pass it on, does not belong indiscriminately to anyone who may encounter it.

Whilst it is not possible for detailed knowledge of these requirements to be known outside a particular cultural group, a thoughtful and sensitive awareness of these issues will assist.

displaying art in exhibitions

It is obligatory to display Indigenous art work appropriately. It has its valued place within the conventions of the Western art market, but its cultural context is equally important. There are different issues at stake, in different contexts - sometimes arising from cultural requirements, sometimes as curatorial statements. Given the diversity of contemporary Indigenous communities, requirements differ. A common issue relates to deceased persons.

- deceased artists and display of art works:
- some communities will request that art work by a deceased artist not be displayed for a time after the artist's death;
- some communities will request that an artist's name not be used for a time after the artist's death;
- some communities will request that images of an artist not be displayed for a time after the artist's death.

These restrictions will sometimes be applied to a catalogue publication. If staff members at a gallery or museum are aware of a bereavement, efforts should be made to contact

the community for advice on how to appropriately deal with the situation. Alternatively, the community may contact the gallery directly, if they know there are sensitive images on display.

At times, especially with travelling exhibitions, the gallery may have no way of knowing that an artist or someone depicted in a painting or photograph is deceased. Distress to relatives or community members who may visit the gallery can be caused by their being inadvertently confronted by such material. There needs to be a preparedness to remove works from the public view, in these circumstances.

On occasion, the community may give permission for images and names to be used after the death of an artist, as was the case with the late Emily Kngwarreye, and the major retrospective of her work by the Queensland Art Gallery in 1998. On occasion, artists may themselves instruct family members or agents that their works, name use and image display should not be restricted.

authenticity

It is important that the authenticity of any Indigenous works displayed in an exhibition is established. Authenticity can usually be assured by dealing with art and craft centres, reputable agents, collectors, galleries or museums; or by taking advice from any of these sources. The artist may personally be involved in preparation, and this will usually ensure authenticity. The label of authenticity [11.1 purchase of Indigenous art works] may be of use in an exhibition context.

From a market perspective, there may be discussion about the authenticity of works created collaboratively; however, the observance of cultural protocols is an important part of Indigenous art and various types of collaboration may be acceptable to Indigenous communities.

CASE STUDY 5: Authenticity c.1997

In March 1997, it was publicly revealed that an elderly white artist, Elizabeth Durack, was the creator of paintings previously claimed to have been created by Eddie Burrup, a fabricated Aboriginal artist from the Kimberleys in Western Australia. The paintings were presented as the work of a Maban, an initiated man of high degree, and presented with the authority of that respected position. They were included, under the auspices of the Durack Gallery in Broome, in an exhibition of Indigenous art, *Native Titled Now*, and entered in the Telstra presents the Aboriginal and Torres Strait Islander Art Award, at the Museum and Art Gallery of the Northern Territory in Darwin. Direct contact by the Durack Gallery, with the Indigenous curator Doreen Mellor, and the presenting gallery Tandanya in Adelaide, made this deception particularly distasteful, and underlined the unfortunate recent escalation in the necessity for authentication of both works and artists. In this case, at the instruction of the curator, and under the scrutiny of television news cameras, the works were removed from the wall of the gallery, which was hosting the touring version of the exhibition at the time.

It is important to establish, especially with earlier works which may have been acquired before the development of a market for Aboriginal and Torres Strait Islander art, that the display of works does not infringe customary law. In most cases this is not likely, as Indigenous art works, for at least two decades, have been created with a degree of knowledge of the art market, and normal display situations. Difficulties may occasionally arise if works were acquired many years ago by individuals who perhaps worked in communities, and passed items on without disclosure of the original cultural context of the work. It is rare that secret/sacred material is found in the context of art - this is usually an issue for natural history museums, which may have older collections of Indigenous material culture [15 Public collections].

15 Public collections: Indigenous art, and its management

15.1 Acquiring art work for public collections

When purchasing Indigenous art works, careful sourcing and knowledge of the provenance of a work, will usually assure authenticity [11.1 purchase of Indigenous works of art] and to this end, appropriate avenues for acquiring art works should be sought.

Bequests are usually accepted into public collections only after an evaluation process which takes the acquisition policy and other factors into account. During this process, it would be usual to seek authentication of art work.

15.2 Care of collections

It is important that, where possible, Indigenous reference groups or researchers and employees be part of the team which cares for major Indigenous public collections. This ensures that Indigenous people are involved in decisions relating to collected art works - thus addressing the principle of self determination - and that benefits in the form of employment opportunities accrue to the Indigenous community from Indigenous cultural product. It also helps to ensure culturally appropriate management of Indigenous collections, resulting in benefits to the institutions themselves.

15.3 Appropriate archival description and cataloguing terms for collections

Any descriptions of objects and art works held in public collections should be acceptable to Indigenous people, who should not feel alienated by the cataloguing and registration terms used. Indigenous people are often actively welcomed in cultural institutions, however:

"No person is likely to willingly go to a place which displays or portrays them in a way that is alien or degrading"

Mick Dodson, 1993⁵¹

Access to material in collections was once limited to staff and the occasional scholar. However, with greater access to collections and catalogues by a wider range of people, including Indigenous custodians of material culture, the use of such outdated and value-laden terms as 'ethnographic', in cataloguing systems or as part of storage signage, have come under greater scrutiny. These terms need to be updated. Where there are major changes to be made, a consultation process could be established, using an Indigenous reference group, consulting with Aboriginal and Torres Strait Islander peoples at local, state and national levels.

15.4 Restricted materials

It is unlikely that materials in a collection of art works are intrinsically of a confidential or sensitive nature, unless they pre-date the 1980s. Some art work from the early 1970s may be sensitive. Until the scope of the art market

⁵¹ cited in *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*, compiled by Byrne, Alex, Garwood, Alana, Moorcroft, Heather and Barries, Alan, and endorsed at the Aboriginal and Torres Strait Islander Library and Informations Resources Network (ATSILIRN) conferences, December 1994 and September 1995

was known to those painting during that time, some restricted designs may have been included in art works. It is wise to ensure that works from these and earlier times are suitable for public display. Early works are usually to be found in very large public galleries and natural history museums, most of which have instituted responsible policies for managing these items.

The Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services outlines three steps for handling of secret, sacred or sensitive materials, which transfer well to any sector. They are:

- the identification of such material in collections;
- the determination of appropriate policies for handling of this material once it is identified; and
- the strict implementation and observance of those policies in the day to day operation of the holding institution.

On occasion, secret sacred content may be used inadvertently by artists. Once this becomes known, the works should not be displayed in public.

Cultural sensitivities with regard to deceased artists should be observed [see 14.3 viewing exhibitions of Indigenous art].

15.5 Access to collections

Works of art in public collections are part of the national estate, held in trust for the Australian people. Indigenous art works have other layers of collective ownership which public collecting institutions have a responsibility to honour.

An important part of the responsibility of holding such collections is making them accessible to the public through education and public programs. For Indigenous people it is also important that there is access to collections by the artists, their relatives or members of their community who may have a cultural link to acquired works, and that they feel that their presence is welcomed.

CASE STUDY 6: Indigenous access c.1998

The collection of Flinders University Art Museum includes many Indigenous works by artists from different parts of Australia. A focal element of the collection is the group of early works from Papunya, acquired during the 1970s, and comprising the largest public collection of early Papunya works in Australia. Many of these early artists' close relatives live in settlements near Papunya,

including in the Haast's Bluff community. The Haast's Bluff school decided to come to Adelaide on a major excursion in a large bus, the children accompanied by teachers, parents and family, and the coordinator of the Ikuntji Women's Centre, Marina Strocchi. Marina had encouraged the development of painting amongst the people of Haast's Bluff and Flinders Art Museum had a number of recent works by these artists in its collection. Part of the excursion to Adelaide then, was a planned visit to the Museum. The Campus Gallery was filled to the brim with children and their adult family members, and all sat spellbound on the floor as a large selection of work by relatives - many now deceased - was pulled out and the paintings talked about, one by one. The importance of close kinship ties meant that the works were held in great reverence and regard by all the children, and took on greater meaning and life for Museum staff. After looking at paintings, there were picnics and a barbecue on the grass outside the Museum - a lively and fulfilling day for both Haast's Bluff and Museum people, well worth the trouble taken by both groups.

16 Research In the Indigenous Visual Arts sector

Indigenous artists, curators or community members, are often a primary research source for those working with exhibitions or collections, in academic environments, as authors of articles, books or catalogue essays, or as journalists. There are many sources of ethical guidelines for approaching research on Indigenous culture, including aspects of culture involving the visual arts.

Recommendation 51 from the Royal Commission into Aboriginal Deaths in Custody states:

That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs:

1. *the extent to which the problem or the process being investigated has been defined by Aboriginal people or the relevant community or group;*
2. *the extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research;*
3. *the requirement that Aboriginal people receive the results of the research in a form which can be understood by them; and*

4. *the requirement that the research include the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.*

Even though the types of research referred to in this recommendation may differ from that carried out for visual arts activities, it nevertheless incorporates indicators about appropriate inclusion of Indigenous people, their benefits and concerns. These must always be primary concerns when accessing funds for activities based on Indigenous artistic output.

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has published a set of ethical guidelines and protocols for Indigenous research, which can be accessed on the relevant website (see Appendix 5 for contact details). The essential principles followed relate to:

a) informed consent to the research by the community in which the research is to be carried out

- encourage individual or community participation in defining the research objectives
- respect cultural sensitivities and the community's decision if they refuse participation

b) benefit to the community as well as benefit to the broader Aboriginal and Torres Strait Islander community

- promote the Indigenous community and their expertise
- promote local employment

c) recognition of Indigenous cultural and intellectual property rights in the material gathered for the research project

- establish negotiation procedures to agree upon issues of ownership and control of research outcomes

d) appropriate use of research results as agreed with the community

- make available the results of the research to the relevant community
- respect Indigenous protocol when it comes to the use of audio recordings, photographs/vision and identification of individuals

Ethical guidelines, policies and protocols for research relating to Indigenous Australian culture are produced by many Universities, as part of their research ethics publications, and there are also separate documents

produced by some universities, often originating from Departments of Indigenous Studies, or Indigenous Research Centres within universities.

An example is that compiled by CINCRM, the Centre for Indigenous Natural and Cultural Resource Management at the Northern Territory University. These can be accessed from the CINCRM website (see Appendix 6 for contact details).

17 Management In the Indigenous Visual Arts sector

17.1 Governance and management

The involvement of Aboriginal and Torres Strait Islander people in the governing, advisory and management operations of organisations holding substantial collections of their work is essential. It is important that Indigenous Peoples are involved in the development and implementation of policy in public collecting institutions or those which service the Indigenous art sector. Mechanisms need to be developed to ensure effective monitoring and review of policy implementation, and the involvement of Indigenous people in these processes.

17.2 Staffing

As briefly outlined in [15 Public collections] Indigenous people should be employed wherever possible, in institutions holding collections of Indigenous art. Indigenous people can also be involved in short-listing and selection of candidates for employment. Indigenous staff members should be trained, supported, and mentored. Where non-Indigenous staff work with Indigenous people or with cultural material, their work should be supported by culturally appropriate training.

17.3 Culturally appropriate management

It is also important that an organisation which employs Indigenous staff members, recognises and responds to their cultural needs and obligations. In some Indigenous organisations, cultural requirements are part of workplace agreements and may include provision for bereavement or 'sorry' leave, or leave for carrying out ceremonial 'business'.

17.4 Managing visual arts events

Reference has already been made, in other parts of the document, to various ways of dealing with public situations and issues of cultural sensitivity, which might arise during public events.

Following are some observations on these issues.

- The presence of Indigenous artists is often desired, as part of the recognition of cultural meaning attached to art works. Apart from the obvious courtesies of hospitality, it is important to remember that artists from remote communities do not like to travel alone, and that budgets should include provision for accompanied travel.
- When members of more than one community are present, some negotiation may be needed in regard to cultural activity. For instance, a respected male elder from the Kimberley region once politely left a city gallery and stood quietly outside the door, until a group of Central Desert women who were dancing, noticed his absence and invited him back into the gallery space, telling him it was okay to see the dances they were performing.
- Material which is appropriate for one group of people to display publicly may be difficult and even distressing for another group to view. It is not always possible to foresee such situations, but good communication, and keeping people informed as events unfold, does much to avert any difficulties of this nature, which may arise.
- Be aware of cultural transgressions which may be perpetuated by tourist directed activity. An example is the use of the didgeridoo, which is played at many large public events. Didgeridoo music is not an appropriate background for desert paintings, as this instrument traditionally relates to northern cultures. It should be made clear that the original language names for the didgeridoo are specific to each cultural group. The sale of didgeridoos which have been beautifully decorated with dot designs may not be appropriate. The engagement of a didgeridoo player who is either non-Indigenous or female may not be appropriate (this should be established with the relevant community before proceeding).

18 Funding

In the Indigenous Visual Arts sector

18.1 Funding for Aboriginal and Torres Strait Islander activities

Specific funding for Aboriginal and Torres Strait Islander activities is available as a support for Indigenous artists and organisations. Requests for funding from sources which support these activities, by non-Indigenous organisations, should be premised on the maximum inclusion and benefit to Indigenous artists, curators, organisations and communities. Funding applications to these agencies can be justified only if the activity will provide financial benefits to, or further the professional development of, the Indigenous people involved.

Of concern also, are:

- adherence to guidelines;
- reasonableness of requests; and
- that a reasonable timeframe be given, for consideration of requests for assistance.

The above points may seem obvious; however, there have been many instances where requests to funding agencies, for assistance at very short notice, are unreasonable by nature of their size and/or the timeframe within which the request is able to be considered.

18.2 Funding agencies

A number of agencies provide funding through programs directed towards the support of Indigenous arts and cultural activity, including:

- 1. *Aboriginal and Torres Strait Islander Arts Board of the Australia Council;***
(the principal arts funding agency)
- 2. *Aboriginal and Torres Strait Islander Commission (ATSIC);***
- 3. *Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS);***
- 4. *State ministries for the arts and culture.***

The Aboriginal and Torres Strait Islander Arts Board of the Australia Council funds a number of programs, across different artforms, specifically directed towards the arts (see Appendix 4 for more detail).

In relation to the arts, ATSIC has a more restricted brief, but funds a number of community-based arts and craft centres on an annual basis through the National Arts and Crafts Industry Support Strategy (NACISS). ATSIC's regional councils direct funds towards a range of cultural projects of different kinds (see Appendix 4 for more detail).

Not all state arts ministries have programs specifically for Indigenous arts, however, most have an Indigenous contact officer and will endeavour to ensure that a proportion of funding goes to Indigenous projects.

Contact details, including websites, for these organisation and agencies, can be found at Appendix 5. Further information about the National Arts and Craft Industry Support Strategy and Regional Arts and Craft Support can be provided by ATSIC's regional offices.

Other agencies may provide dedicated programs or funding, and it is worth checking the websites of various departments for information - even such an unlikely candidate as the Department of Immigration and Multicultural Affairs has Indigenous-specific funding programs available at various times.

PART 3: Indigenous visual arts and the law

INTRODUCTION

An artist is generally concerned with the creating of his or her artistic works. Why should the law be a concern?

The fact is that the law has a marked impact on the professional life of an artist. Just by creating a work, the laws of copyright apply. If a visual arts organisation asks an artist to create or exhibit that artistic work, contract law comes into play.

For Indigenous artists, art is an expression of a unique and continuing tradition. Art is central to identity, place and belonging. Art has an important place in the continuing survival of these Indigenous cultures. What does culture have to do with law? The law has a very important affect on the cultural life of an Indigenous artist and his or her community. When an artistic work is created, copyright law says protection will only be given for 50 years after the artist dies. Culturally, this artistic work remains significant beyond this time. If an Indigenous artist is requested by a visual arts organisation to create or exhibit that artistic work, the artist is faced with the responsibility of ensuring the cultural integrity of the work will be maintained by third parties, who are located outside the obligations of his or her culture.

This is where the law meets ethics and protocols. What are ethics and protocols? Generally, ethics are a system of moral principles. A protocol is a system of cultural principles. The law, as it has developed so far, does not always observe cultural principles. While it is not against

the law to deal with Indigenous visual arts using only legal principles as a guide, ethics begs the issue of also observing protocol.

This legal section is designed to advise Indigenous artists, and visual arts organisations dealing with them, to be aware of some of the related legal issues. It is by no means exhaustive and aims to provide a legal background for the ethical considerations discussed in this document.

19 What is copyright?

Copyright is a package of property rights owned by creators, by virtue of the Copyright Act 1968. Copyright protects “artistic works” including:

- paintings; sculptures; drawings; engravings or photographs;
- buildings or models of buildings;
- works of artistic craftsmanship.⁵²

Under the Copyright Act, a copyright owner has the exclusive right to use and reproduce his or her copyright works and to authorise others to use and reproduce his or her copyright works. The Copyright Act also protects sound recordings; cinematograph films (including videocassettes); television and sound broadcasts and published editions of works.⁵³ There is no requirement

⁵² “Work of artistic craftsmanship” is a legal term included in Section 10 Copyright Act 1968.

⁵³ Section 89 - 92, Copyright Act 1968

for an artistic work to be registered to receive protection. Artworks are protected as soon as they are created, so long as the work meets the requirements of the Copyright Act.

To assert ownership over an artwork, it is a good idea to put a copyright notice on the artwork which includes the name of the copyright owner and the year the work was first created or published. For example:-

© Terri Janke, 2001.

20 Copyright subsists in:

20.1 Original artistic works

A work does not need to have a particular artistic or creative level of quality for protection. Works must be “original” in that they have originated from the author and have not been copied from elsewhere.⁵⁴ Some commentators have suggested that the resulting artworks of Indigenous painting traditions do not meet the originality requirements of the Copyright Act 1968. They argue that the paintings are merely reproductions of pre-existing clan designs that originated many generations ago. However, recent copyright case law has stated that copyright can subsist in Indigenous artworks that depict pre-existing traditional designs, if the artist can be shown to have imparted skill, effort and originality. The issue of whether an Indigenous work meets the originality requirement will depend on the facts of the particular case.

The Carpets Case (see Legal Case Study 3)

The artworks in the Carpets Case were all traditional Aboriginal artworks painted by Indigenous artists. For instance, the artwork *Djanda* and the *Sacred Waterhole* by *Banduk Marika* reproduced imagery from *Yalangbara*, her traditional birthplace. The artwork depicted traditional pre-existing designs. The judge held that “Although the artworks follow traditional Aboriginal form and are based on dreaming themes, each artwork is one of intricate detail and complexity reflecting great skill and originality.”⁵⁵

20.2 Works of ‘artistic craftsmanship’

The Copyright Act deals with works of artistic craftsmanship as a separate category from artistic works. A work of artistic craftsmanship is a work that:

- i. is produced by a craftsman (sic)
- ii. has an artistic quality.

It must also have an aesthetic quality. Whilst many hand made objects are works of artistic craftsmanship, a mass produced article can still be a work of artistic craftsmanship.⁵⁶ Such work is capable of copyright protection unless it is industrially applied. Works of artistic craftsmanship include didgeridoos, wooden pit dishes and spears.

20.3 Material form

Copyright protects works reduced to a material form. This means that a work must be in a permanent and tangible form.⁵⁷ Copyright protects the expression and not the underlying idea. In this way, for example, copyright will attach to the painting of the *wandjina* and not the underlying design of the *wandjina* itself.

Copyright does not protect intangible forms such as spectacle, performances and ideas. For protection works must be permanent. This raises the issue of whether Indigenous arts such as body painting and sand sculpture are protected under copyright.

Q. Is body painting protected?

A. Body painting is an important form of Indigenous artistic expression. Clan designs and images are sometimes painted on the body for the purposes of ceremony. Body designs have previously been denied protection under copyright because they are not in permanent form.⁵⁸ However, if the source of copying is from a photograph that is protected by copyright, the copyright owner of the photograph may be able to take action against inappropriate and unauthorised reproduction of Indigenous body designs. In the writer’s opinion, this issue of whether copyright protects body painting requires reconsideration given that in recent years copyright has been found to subsist in computer and digital forms of expression.

20.4 Author

Rights granted under copyright generally vest in the first instance with the author of the work. An individual author or group of authors must be identifiable. With Indigenous artistic cultural expression, some designs have been passed down through many generations so that an individual author may not be able to be identified. In addition, in accordance with Indigenous beliefs, the designs may have been created by ancestor beings.⁵⁹ Copyright vests in individuals as creators of works. The communal ownership of Indigenous Cultural and Intellectual Property such as clan designs is not recognised.

⁵⁴ Section 32, Copyright Act 1968

⁵⁵ *M* v Indofurn* 30 Intellectual Property Law Reports 209 at 216

⁵⁶ *Coogi Australia Pty Ltd v Hysport International Pty Ltd & Ors* (includes corrigendum dated 7 October 1998) [1998] FCA 1059 (21 August 1998)

⁵⁷ Sections 31(1)(a)(i) and (b)(i) Copyright Act 1968

⁵⁸ *Merchandising Corp of America Inc v Harpbond* [1982] FSR 32

⁵⁹ See Definition Section

Unknown Artists

Many bark paintings collected from 1940 - 1970 do not have information about the artists who created them. What rights do other clan members have in cases where the author is unknown but the original clan is? Recent case law suggests that the clan, which communally owns the pre-existing designs embodied in Unknown Artists' works, may be able to take action for infringement of copyright attached to the artwork.⁶⁰ A further issue yet to be resolved is whether the clan group can claim entitlement to royalties for the reproduction of such artworks.

20.4.1 Works of joint ownership

Under the Copyright Act, a "work of joint ownership" refers to a work produced:

- by the collaboration of two or more artists, where
- each artist's collaboration is not separate from the contribution of the other artist or the contributions of the other artists.⁶¹

The artist must contribute to the work by way of effort, skill and labour. It is not enough to make suggestions. Each artist of a work of joint authorship owns copyright in the resulting work.⁶² This means that each artist must obtain the other's consent before exercising any of his or her rights under copyright. For example, if an artist wants to license the rights to reproduce a collaborative painting to a third person, he or she must get the consent of all the artists who participated in the collaboration. In situations where a group of artists has collaborated in a work - for instance, in large-scale works, murals and other community landscape projects - it is important to get copyright clearances from all the artists.

Communal Ownership vs Joint Ownership

In *Bulun Bulun v R & T Textiles*, the court considered that traditional Indigenous works that contain "traditional ritual knowledge" handed down and developed through generations, were not works of joint ownership. Although, under Aboriginal laws, the entire community may have an interest in the particular piece of art, and the designs and knowledge therein, copyright does not recognise such notions of communal ownership.

20.5 Connecting factors

A work and its authors must also meet the connecting factors - the creator must be a citizen/resident of Australia or the work must be first published in Australia.

21 Duration of copyright in artistic works:

Copyright protects artistic works during the lifetime of the artist and for 50 years from the death of the artist. After this time has expired, the artistic work becomes part of the public domain where it is freely available to everyone to use and reproduce without having to obtain the consent of the artist, or pay fees. For instance, the works of Leonardo Da Vinci, who died in 1519, fall into the public domain. Paintings such as the Mona Lisa can be copied without having to seek consent of the artist's representative or pay reproduction fees to the artist.⁶³

For photographs and other categories such as film, the term of copyright runs for 50 years from the date of first publication.⁶⁴

Copyright does not cover all ownership situations within the Indigenous arts. For example, some forms of Indigenous rock art are very old, and although the images remain important and may belong culturally to certain groups, copyright does not protect rock artworks that are older than 50 years from the death of the artist. Despite this, it is recommended that permission for reproduction of rock art should be sought from local Indigenous Groups. (See list of Indigenous Arts Centres, Appendix 3).

It should be remembered that some rock art is not so old, and there may be copyright still subsisting in the artistic work. Rock art has been copied on a range of products such as t-shirts, tea towels and tablecloths, the images in some cases being altered so as to appear generic.

22. Who owns copyright in an artistic work?

The artist as author and creator of the artistic work is generally the first owner of copyright. If an artwork is sold, the artist will still own copyright in the work, retaining the rights to reproduce and to authorise others to reproduce the artwork. Copyright exists as distinct from the physical painting.

⁶⁰ *Bulun Bulun v R & T Textiles* (1998) IPR 513

⁶¹ Section 10, Copyright Act 1968

⁶² Section 35, Copyright Act 1968

⁶³ There may be rights to the Gallery Louvre for access to the artwork, or to photographic libraries for use of images of the artwork.

⁶⁴ Sections 33(4), 34 and 93 - 96 Copyright Act 1968

However, there are some important exceptions to this:

22.1 Works produced under contract of employment

An employer will own the copyright in works created by their employees in pursuance of the terms of his or her employment, where the work is created under a contract of service.⁶⁵ To assess whether a person is employed under a contract of service, it is necessary to consider firstly the terms of the service arrangement.⁶⁶ Some issues which must be considered when assessing whether copyright vests in the employer are:-

- Whether the artist is an integral part of the employer's organisation or company?
- Whether the artist uses his or her own capital or resources to carry out the job?
- Whether the artist receive a fixed regular salary?
- Whether the artist receives superannuation, sick leave entitlements, holiday pay, long service leave or worker's compensation?

The second issue is whether the work was created "in pursuance of the terms of employment". If the work is created as part of a person's normal duties is likely to be owned by your employer.⁶⁷

If an artist is employed on the job as an artist and receives regular wages, leave entitlements and the materials are all provided by the employer, then copyright is likely to vest with the employer, unless there is a written agreement otherwise.

LEGAL CASE STUDY 1 - employment examples

(a) June is employed as artist with XYZ Arts Centre. She receives wages each fortnight and is entitled to leave and holiday pay. All the materials are supplied to the artist by the arts centre. She has a written agreement with the Arts Centre that states that she will own copyright in the artworks she produces at the Centre.

(b) Tom is an Aboriginal Liaison officer with the University. For NAIDOC Week he painted an artwork for the cover of the office newsletter. Because, painting is not part of Tom's normal work duties, the copyright in the artwork he produced is likely to vest in him. He may be entitled to claim licence fees for the reproduction of his artwork.

22.2 Commissioned works

Copyright in commissioned works will belong to the artist unless there is some written agreement otherwise, or if it is covered by exceptions in the following paragraph [22.3]. Given the nature and cultural significance of Indigenous art, it is recommended that the copyright in the artwork remain with the artist. The commissioning body should seek a licence for the rights it requires. For example, where artwork for a book cover is needed, the work may be commissioned for an agreed fee. In return for payment of this fee, the artist grants the publisher a non-exclusive licence to reproduce the artwork on the book cover and with all promotional material associated with the book. The copyright in the artwork remains with the artist.

22.3 Commissioned photographs for private and domestic purposes and portraits

The person who commissions the work, unless the agreement provides for a different arrangement, owns copyright in certain commissioned works. When a photograph is commissioned for private or domestic purposes, which includes a portrait of a family; wedding party or children, the person who commissioned the photograph owns the copyright. The person who commissions a painting or drawing of a portrait or an engraving also owns the copyright. Although the person who commissioned the work owns the copyright, the author can include a term in the agreement, which states that the work can only be used for the purpose for which it was commissioned. For example, if a person wants a family portrait taken as a birthday present, the photographer can prevent the use of the photograph in an advertising campaign.

22.3.1 Photography of Indigenous people

Many Indigenous people have expressed their concern about use of their images in commercial photographs without permission. It is generally not necessary to get the permission of a person to take their photograph. This is because there is no general law of privacy in Australian law.⁶⁸ Copyright in a photograph of an Indigenous person may vest in the person who took the photograph. Unless it is a commissioned portrait, the person who is the subject of a photograph does not own copyright and cannot use copyright law to stop the photographer from dealing with the image commercially. Despite this, when recording the images of Indigenous people, there is a need to respect the cultural life of Indigenous people and seek the prior consent of a person with authority for commercial

⁶⁵ Section 35(6) Copyright Act 1968

⁶⁶ *Beloff v Pressdram Ltd* [1973] All ER 241

⁶⁷ *Antocks, Lairn Ltd v I Bloohn Ltd* [1972] RPC 219

⁶⁸ There are other laws such as defamation and trade practices laws that might be relevant.

photography. A photographer may also need to get a permit to take commercial photography on Indigenous land. For instance, see Uluru-Kata Tjuta National Park, Commercial Photography Guidelines. As the following case illustrates, seeking the prior consent of those photographed, and the Indigenous custodians of the land can avert many problems.

LEGAL CASE STUDY 2: Unauthorised photography

In 1998, Galarrwuy Yunupingu was alleged to have assaulted a photographer and damaged his camera and equipment.⁶⁹ Yunupingu was acting in his role as custodian to protect two Yolngu children who the photographer had photographed while swimming naked. Yunupingu snatched a camera from the hands of the photographer and destroyed the film.

The photographer is reported to have been a trespasser on Gumatj land because he did not have a permit to enter that land. Under the terms of the permit, there are conditions prohibiting commercial photography on Gumatj land without permission of a senior custodian. However, because the photographer had not applied and attained a permit, he was unaware of these conditions.

As noted by the Court:

“Under Yolngu law, if a stranger wishes to visit Gumatj land, it is expected that he approach a senior member of the land. He should approach the senior member with the purpose of seeking permission to enter the land and should receive the permission of that senior member before entering. The senior elder has a discretion. He can refuse permission to enter.”

“Another offence ... is the taking of photographs for commercial purposes, whilst on Gumatj land, without the permission of the senior elder or senior member. Under Yolngu law, the image of the land is valued highly. It is believed that the reproduction of an image of the land interferes with Yolngu law because it diminishes the integrity or the strength or the wholeness of the land.”

“The landscape includes ground, trees, rocks and streams - the landscape as well as the people on the land who identify with the land, and its spirits.”

“If a stranger trespasses or takes photographs for a commercial purpose without permission, he is expected to expiate his wrongdoing. Expiate means pay the penalty or make amends. This might involve giving compensation, or a criminal sanction and an apology.”⁷⁰

Yunupingu explained that photographing a person is an act of capturing that person's spirit. The Court was satisfied that as senior custodian of that clan, Yunupingu was responsible for the representation of Gumatj land. The Court found that Yunupingu's actions were consistent with this responsibility. The charges were dropped.

22.4 Crown copyright

The “Crown” generally refers to the commonwealth or state government. The Crown may assert copyright in artistic works that are made by, or under its direction and control.⁷¹

The government is an important source of work for many Indigenous artists. It is very common for government bodies to commission Indigenous artists' works to promote Indigenous programmes. In addition, government funded agencies commission many artistic projects involving Indigenous artists. It is not always clear whether the artistic work is being produced “under the direction and control” of the Crown. For this reason, it is advisable for artists who are dealing with government bodies, or government funded bodies, to seek clear copyright provisions in a written agreement before starting work on any commissioned artistic works.

The Copyright Act also provides that the Crown is the owner of the copyright in an original artistic work first published in Australia if first published by, or under the direction or control of, the Crown.⁷² A work is first published when copies of it are distributed to members of the public. If an artistic work is produced first for publication by a government department, the Crown could make a claim to the copyright in the artistic work. Obviously in these situations, it is advisable for artists to have clear copyright provisions in a written agreement.

22.5 Written agreement

It is possible to alter the ownership rules of copyright by way of a written agreement. For instance, if a contract between an artist and a community organisation states that copyright in the commissioned work vests with the organisation, then copyright will vest with the organisation. The artist will therefore have no rights under copyright except for moral rights.

⁶⁹ Colin Goodsell v Galarrwuy Yunupingu, Court of Summary Jurisdiction, Northern Territory of Australia (Gillies SM), 20 February 1998, (1999) 4 Australian Indigenous Law Reporter 29

⁷⁰ Ibid at 30

⁷¹ Section 176, Copyright Act 1968

⁷² Section 177, Copyright Act 1968

23 Copyright owner's exclusive rights

The copyright owner of an artistic work has the exclusive right to do all or any of the following:

- (i) to reproduce the work in a material form;
- (ii) to publish the work;
- (iii) to communicate the work to the public.⁷³

Some examples of copyright applications of artistic works include:

- reproduction on the cover of a book (*reproduction right*)
- reproduction on a t-shirt (*reproduction right*)
- postcard (*reproduction and publication right*)
- broadcast on television (*communication right*)
- cable television (*communication right*)
- internet (*communication right*)

Q.What happens when I sell my painting? Does the buyer own the copyright?

A. When you sell your painting you are selling the physical painting. The copyright remains with the copyright owner (unless of course there is a written agreement otherwise). If someone wants to reproduce the artwork on t-shirts, then permission to reproduce the work must be obtained from the copyright owner. The owner of the artwork can control access to make the reproduction possible. For instance, galleries or museums which own works may ask for a fee to allow a person to photograph a work, or to make use of its transparencies.

24 Infringement of copyright in an artistic work

It is an infringement of copyright in an artistic work to do any act comprised in the copyright, without the permission of the copyright owner.⁷⁴

24.1 Copy the work

It is an infringement of copyright to directly copy an artistic work. It is also an infringement to copy a substantial part of an artistic work. A substantial part of an artistic work does not necessarily refer to a large

part of the work. A range of issues are relevant, including the quality of the part taken. This issue was discussed in the Carpets Case where some of the carpets reproduced only parts of the artistic works.

Under the Copyright Act, it is not necessary for an artwork to be an exact copy for it to infringe copyright. Copying occurs when an artwork has been substantially reproduced. Generally, to consider this, the Court will look at the striking similarities between the original artwork and the infringing copy. Quality is more important than quantity and depends largely on the nature of the parts taken from the original artwork. Justice Von Doussa noted that the altered images on the carpets, although not identical to the artworks, reproduced parts of the original artworks that were centrally important to that particular artwork. In considering whether the Green Centre Carpet infringed Kumantjayi Tjapangati's artwork Kangaroo and Shield People Dreaming, the judge noted that the part reproduced was an important part of the overall work which depicted a sacred men's story. This was one factor that led the Court to conclude that copyright had been infringed.⁷⁵

24.2 Importation for sale or hire

It is an infringement of copyright to import an article into Australia:

- for the purpose of selling, letting for hire or by way of trade offering or exposing for sale or hire, the article;⁷⁶
- for the purposes of distributing the article for the purposes of trade;
- or for any other purpose to an extent that will affect prejudicially the owner of the copyright, or by way of trade exhibiting the article in public if the importer knew, or ought reasonably to have known, that the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

An issue at law is what "knew, or ought reasonably to have known" refers to. Often importers are able to argue "innocent infringement" and thereby escape liability under this section.

Many infringing items of Indigenous artistic works are produced overseas in countries where there are no copyright laws. Hence, the importation provisions are relevant to Indigenous artists. For instance, in the Carpets Case, proceedings commenced under the importation provisions. The carpets were made in Vietnam where there were no copyright laws.

⁷³ Section 31(1)(b), Copyright Act 1968

⁷⁴ Section 36, Copyright Act 1968

⁷⁵ at 229 - 230

⁷⁶ Section 37(1), Copyright Act 1968

In some cases like the Carpets Case, Indigenous artists have used copyright law to protect their cultural interests as well as their individual artistic and commercial interests. However, the Copyright Act does not provide special protection under copyright for Indigenous arts and cultural expression.

LEGAL CASE STUDY 3: The Carpets Case

In 1996, the Federal Court awarded record damages to Aboriginal artists whose works were reproduced on carpets without their permission. *M*⁷⁷ and Others v Indofurn Pty Ltd & Others⁷⁸* involved the unauthorised reproduction of Indigenous artworks on carpets. Damages were awarded to three living artists and the personal representative of five deceased artists who brought the action seeking damages under the Copyright Act 1968 and the Trade Practices Act 1974 against the Perth based company, Indofurn Pty Ltd. Indofurn imported the carpets from Vietnam, a country where there are no copyright laws, and sold them in Australia for up to \$4,000 each. Special punitive damages were made by Justice Von Doussa given the seriousness of the infringement and the fact that Indofurn refused to acknowledge that the artists were the copyright owners in their works, even though the artists were extremely well known.

*M** was one of the artists whose works were reproduced without permission. *M** was the first Aboriginal artist to have a solo exhibition at the National Gallery of Australia. His work *Goose Egg Hunt*, which was reproduced on carpets, is presently owned and displayed by the National Gallery of Australia. It was adopted as a design for the 85 cents stamp issued in 1993, the United Nations International Year of World Indigenous Peoples. The other artists are Banduk Marika, Kumantjayi Payunka (deceased since case) and the deceased artists Ngaritj, Gamarang, Jangala, Tjapaltjarri and Wamut (skin names only are used, as artists are deceased).

The source of reproduction was an educational portfolio of Aboriginal artworks produced by the Australian National Gallery and a calendar produced by the Australian Information Services. According to evidence given to the court, these publications were at the Vietnamese carpet factory when a director of Indofurn first visited it. Designs were selected from these publications for reproduction on carpets. Justice von Doussa found that “there was no real doubt that these carpet designs were the result of the instruction to produce carpets in designs that were less busy than the original works.”

Permission to reproduce the artistic works as carpets was never sought from the artists or their representatives. According to some of the artists, permission would never have been granted because of the cultural significance of the stories represented in the artistic works. The artists and their clan elders are pleased to have such works reproduced in culturally appropriate ways. The public display of these works serves the purpose of educating the wider community about Aboriginal arts. However, it is not appropriate for the artworks to be reproduced without authorisation and in such a culturally insensitive way where they would be walked on.

Furthermore, the inaccuracy of some of the reproduction was found to be offensive to Indigenous clan members and traditional owners given that some of the artworks included secret parts of dreaming that were only familiar to and understood by those who were initiated into the relevant ceremonies or by those who have close knowledge of the cultural significance of the story.

The artists were able to establish that 246 carpets were made from their designs and imported between December 1991 and September 1994. The only offer ever made to the artists was around \$14 per carpet. However, the carpets themselves sold for between \$500 and \$4,000. An amount of \$43,222 was also awarded against two other nominal directors of the company, King and Rylands, whom the trial judge considered had allowed the importation of the carpets after the commencement of proceedings. On appeal of this issue only, the Full Court held that the inaction of the directors to act or stop the importation of the carpets did not amount to authorisation or permission by them for the continued importation of the carpets by the Company. The Full Court found that King and Rylands did not have the necessary mental element to authorise the Company to continue importation, and therefore the judgment debt of \$43,222 against them personally was overturned.

The following main findings of the Carpets Case remain valid:

- Despite the fact that many Indigenous artworks follow pre-existing traditional designs, a work may be original if there is sufficient detail and complexity reflecting great skill and originality.

⁷⁷ Applicant now deceased.

⁷⁸ 30 IPR 209

- The Court's decision regarding damages was also significant. Having decided that the carpets were infringements of copyright, the Court awarded approximately \$188,640 in damages and ordered the importers to hand over the unsold carpets. Part of the award was given in consideration of the personal hurt and cultural harm. The judge considered that the misuse of the artwork caused great upset and cultural harm to the living artists. The court noted that the standing of the artist within the community could be affected where the art works are reproduced without the consent of the group and in a culturally offensive manner. This was because regardless of whether the artists authorised the reproduction of their art works on carpets, they were responsible under Indigenous law for the transgression that had occurred and were liable to be punished for such a breach.

- The Court made a collective award to the artists rather than individual awards so the artists could distribute it according to their cultural practices. At a meeting in 1997, the artists and their representatives met and agreed to share the damages equally regardless of the actual number of carpets per artist that were made. It should be noted that the total award of damages was never paid to the artists or their representatives because Indofurn Pty Ltd was wound up and the active director has been declared bankrupt.

24.3 Remedies for infringement of copyright

There are various remedies available to copyright owners whose copyright has been infringed. The copyright owner can sue for infringement and seek the following:-

1. An injunction to stop the unauthorised use being continued;
2. Either damages or an account of profits may be sought.⁷⁹

Damages can be:-

- compensatory (an award of money compensating the copyright owner for the loss suffered, for example, the value of the licence the copyright owner might have negotiated if permission had been sought)⁸⁰ or;
- punitive damages (these are rarely awarded but sometimes are given to punish the infringer for "flagrantly" disregarding the rights of the copyright owner, as in the Carpets case).⁸¹

An account of profits is an order for the infringer to disclose and pay up all profits made as a result of the infringement.⁸²

In some circumstances, there may be criminal liability for copyright infringement, as in the case of large-scale piracy, and orders for seizure and delivery up can be made.⁸³

Many Indigenous artists whose works are infringed seek apologies from the infringers. For Indigenous artists whose "traditional" work is reproduced without clan authority, an apology may assist in reconciling their obligations at customary law. This is not an entitlement of the general remedies under Copyright Act. However, the new moral rights laws provide an apology as a remedy.⁸⁴

25 Some exceptions for infringement

25.1 Sculptures on permanent public display

The copyright in a sculpture or work of artistic craftsmanship placed in a public place or premises open to the public, otherwise than temporarily, is not infringed if it is reproduced in:

- a painting, drawing, engraving or photograph of the sculpture or work; or
- a film or television broadcast.⁸⁵

Some artists have complained about the use of their sculptures, placed in public places, in advertising and sold as postcards, without their prior permission and without any payment of royalties. Whilst this provision provides a defence to infringement of copyright, there may be moral rights, trade practices and passing off issues actionable in relation to such unauthorised commercial activity.

25.2 Incidental filming

The copyright in an artistic work is not infringed by the inclusion of the work in a film or in a television broadcast if its inclusion in the film or broadcast is only incidental to the principal matters represented in the film or broadcast.⁸⁶ What is "incidental" is a question of degree.⁸⁷

25.3 Fair dealings provisions

There are fair dealings that are a defence to allegations of copyright infringement:

- for research or private study purposes;⁸⁸
- for the purposes of criticism or review, whether of that work or of another work, and a sufficient acknowledgment of the work is made;⁸⁹

⁷⁹ Section 115(2), Copyright Act 1968

⁸⁰ Section 115(2), Copyright Act 1968

⁸¹ Section 115(4), Copyright Act 1968

⁸² Section 115(2), Copyright Act 1968

⁸³ Sections 132-133, Copyright Act 1968

⁸⁴ Section 195AZA Copyright Act 1968 provides remedies for moral rights and includes an order that the defendant make a public apology for the infringement.

⁸⁵ Section 65, Copyright Act 1968

⁸⁶ Section 67, Copyright Act 1968

⁸⁷ See Screenrights for royalties payable to artists for film rights.

⁸⁸ Section 40, Copyright Act 1968

⁸⁹ Section 41, Copyright Act 1968

- for the purpose of, or associated with, the reporting of news in a newspaper, magazine and a sufficient acknowledgment of the work is made, or it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or in a cinematograph film;⁹⁰
- for the purposes of a judicial proceedings or of a report of a judicial proceeding, or for the purpose of the giving of professional advice by a legal practitioner.⁹¹

25.4 Government use of artworks

The Government may use a copyright work without permission of the copyright owner where the use made is “for the services of the Crown”. The artist is still entitled to payment for use and the Government must contact him or her as soon as possible to negotiate this. This is a wide discretionary use for government activities and might even include reproduction on bank notes as had occurred with David Malangi’s artwork on the \$1 note and Terry Yumbulul’s Morning Star Pole, which was reproduced on the \$10 note.

25.5 Library copying

Libraries and archives can make copies of copyright works available to library users for the purpose of research and study, in accordance with statutory procedures, without needing to obtain the permission of the copyright owner.⁹² There are strict limits on the amounts that can be copied and the statutory procedure requires the request to be made in writing and accompanied by a signed declaration from the user that they agree not to use the material for any other purposes.

25.6 Educational copying

Educational institutions such as schools and universities are able to make multiple copies of print material and to copy television and radio for educational purposes. They must however pay statutory licence fees to the relevant collecting societies. Artists should be aware of these schemes, as there may be royalties payable to them in certain circumstances.

The Copyright Agency Limited (CAL) administers the print-copying scheme. CAL is a non-profit company, which primarily manages the copyright on authors and publishers. Membership of CAL is free. CAL collects royalties from the educational institutions, and distributes moneys to the artists, photographers and illustrators who may be eligible for copyright in artistic work included in books and periodicals.

Viscopy is the Australian and New Zealand copyright collecting society for the visual arts. See Appendices 4 & 6 for contact details.

Screenrights administers the Television and Radio Copyright Scheme. With a Screenrights licence, an educational institution can copy from all radio and television in Australia, both free-to-air and pay television. A fee is paid back to copyright owners for the use of their work. Screenrights has given funds to Viscopy to facilitate payments to artists in respect of artistic works that are reproduced in films. See Appendix 5 for contact details.

26 Digitalisation issues

26.1 Digital agenda amendments

The Copyright Amendment (Digital Agenda) Act 2000 introduced changes to the Copyright Act to meet the challenges posed by new communications technology, particularly the Internet. The Act introduced the new right of communication to the public.⁹³ This provides copyright owners the right to control how their work is electronically transmitted to the public or made available online. The publisher of a website must obtain a licence to make a creator’s artwork available online by means of its website.

The new right is technology-neutral in that it covers a broad range of uses, including broadcasting and cable-diffusion, Internet and Intranets.

Under the amendments, libraries; archives; galleries and museums will be able to use material in their collections for preservation and internal management provision without obtaining permission. This could include digitising the material and making it available on an intranet for staff use only.⁹⁴

If copyright material is acquired in digital form, cultural institutions will be able to make it available electronically onsite to general users of the institution provided there are technical restrictions which prevent users from downloading and printing off copies.

The new laws provide that the copyright in a work, or an adaptation of a work, is not infringed by making a temporary reproduction of the work or adaptation as part of the technical process of making a communication, or in the course of looking at material on a computer screen.⁹⁵ These provisions effectively provide that there will be no infringement of copyright where there has been a temporary reproduction of the work or when it is merely reproduced as a requirement of use of that internet program.

⁹⁰ Section 42, Copyright Act 1968

⁹¹ Section 43, Copyright Act 1968

⁹² Section 49, Copyright Act 1968

⁹³ Amended Section 31(iv) Copyright Act 1968: The Bill was passed in 2000 and came into effect in March 2001.

⁹⁴ Amendments to Sections 49-50, Copyright Act 1968

⁹⁵ Section 43A, Copyright Amendment (Digital Agenda) Act 2000

26.2 Digitising Indigenous artworks

Indigenous people are concerned that digitising Indigenous artistic works increases the likelihood of infringement and distortion of the designs. There are also concerns for making artworks available on the Internet. The Australian Indigenous Cultural Network (AICN) is developing a national Indigenous gateway website that will allow Indigenous people to access cultural heritage information held in cultural institutions or posted on the website. At the same time, the AICN wishes to promote respect and understanding of Indigenous cultural heritage to ensure that, among other things, such information is not exploited or misrepresented. Towards this end, the AICN aims to develop a Code of Ethics that will set the framework for respecting Indigenous Cultural and Intellectual Property in the Digital Domain.

26.2.1 Making Indigenous artworks available on line

There is a growing number of websites dedicated to the sale of Indigenous artistic works on the internet, which provide a worldwide market for artists to sell and promote their artworks. Generally, the sale of art on-line is difficult. As Chris Lee points out, “many buyers are suspicious of information security and the “authenticity” and quality of the art being purchased.”⁹⁶

There are also disadvantages in putting an artistic work on a website. As a digital image, the artistic work can be copied and downloaded anywhere in the world, without the artist or copyright owner being able to easily track use to control permissions and payment of royalties. The image can also be manipulated.

When considering putting artistic works online, it is important to consider these risks. The artist should always demand the right to approve any alterations made to the images. In order to protect against the ease of copying, some website publishers make use technological copyright protection devices, such as access codes, encryption and software locks. The Digital Agenda Act bans the sale in copyright hacking tools. However, works are never really one hundred per cent safe from copying.

26.2.2 Whether existing contracts cover new communication right

In some instances, a university or government department who has an existing licence agreement with an artist, may ask the artist to allow images of artistic work to be used on its website. The Arts Law Centre of Australia recommends that a new licensing agreement be entered into if the use is

not already covered by an existing agreement.⁹⁷ Further, a fee is also recommended if the use is to primarily benefit the third party.⁹⁸

27 Moral rights

Moral rights were introduced into the Copyright Act in December 2000 by the Copyright Amendment (Moral Rights) Act 2000. In force from 21 December 2001, moral rights are:

- the right of attribution of authorship; or
- the right not to have authorship falsely attributed; or
- the right of integrity of authorship.

Moral rights are ‘non-economic’ rights. These rights do not directly provide a financial return to copyright creators or owners.

Moral rights are inalienable rights. They cannot be assigned or transferred by sale. Moral rights are in addition to other rights under copyright. Therefore, they remain with the author where the copyright does not belong to the author. So if a work is produced under a contract of employment and the employer owns the copyright, the moral rights would be maintained by the author. Also, if copyright were assigned to another party under a written agreement, the moral rights would remain with the author.

Moral rights are individual rights belonging to the author. For Indigenous artistic works, a significant issue is whether members of the clan group are entitled to be attributed as communal owners of the clan designs embodied in an artistic work.

27.1 The right of attribution

The right of attribution provides:

- The right to be identified as the author in accordance with the Act, where attributable acts⁹⁹ are done with the work.¹⁰⁰ For artistic works, the creator of an artistic work will be entitled to be attributed each time his or her artwork is reproduced; published; exhibited or transmitted;
- Identification must be in any reasonable form, unless the author has specified a particular form, then it should be in accordance with the author’s specification where it is reasonable in all the circumstances;¹⁰¹

⁹⁶ Lee, Chris, “Indigenous art online - virtual sales of actual art? Profit or Promotion” in *Artlink, Reconciliation? Indigenous Art for the 21st Century*, Vol 20, page 100 - 1-1 at 100

⁹⁷ McCausland, Sally, Legal Officer, Arts Law Centre of Australia, “Selling Art on the Internet”, *ART + LAW*, March 2000, Issue 1, p 7

⁹⁸ *Ibid*

⁹⁹ Section 194 defines attributable acts and includes reproduction, publication etc.

¹⁰⁰ Section 193, Copyright Act 1968

¹⁰¹ Section 195, Copyright Act 1968

- The identification should be clear and reasonably prominent.¹⁰² Identification is taken to be reasonably prominent if it is included on the work in such a way that a person acquiring the reproduction or copy will have notice of the author's identity.¹⁰³

27.2 The right against false attribution

The Copyright Amendment (Moral Rights) Act 2000 also provides for the right not to have authorship of a work falsely attributed. These rights include:

- The right not to have authorship of the work falsely attributed;¹⁰⁴
- Acts of false attribution include implying falsely that a person is the author of an artistic;¹⁰⁵ literary; dramatic or musical work¹⁰⁶ and, dealing with an artistic work, a reproduction of an artistic work or transmitting of an artistic work, where the attributor knows that the name affixed is not that of the author.¹⁰⁷ Similar provisions apply to the attribution of the screenwriter, director and producer of a cinematographic film;¹⁰⁸
- The right to not have work attributed to an author where the work has been altered by a person who is not the author.¹⁰⁹ The exception to this right is where the effect of the alteration is insubstantial or where the alteration was required by law, or to avoid a breach of the law.¹¹⁰

27.3 The right of integrity

This right will allow the artist to take an action against derogatory treatment of an artistic work, except in certain circumstances. "Derogatory treatment" refers to anything that results in the "material distortion of, mutilation of, or material alteration to the work that is prejudicial to the author's honour or reputation"¹¹¹ or "an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs."¹¹²

The right of integrity is not infringed, if it is subjected to derogatory treatment, and the instigator can establish that it was reasonable in all the circumstances.¹¹³ An artist may be able to object to the manner or place in which his or her artistic work is exhibited, or where a work is altered in a derogatory manner. Destruction of moveable and immovable work is dealt with in section 195AT.

The right of integrity is important for Indigenous artists. With many Indigenous artistic works, preserving the overall integrity of the work and underlying story or ritual

knowledge is important. For example, some of the artistic works made into carpets in *M* v Indofurn* were altered, thereby debasing the ritual knowledge embodied therein. Furthermore, the manner of reproduction on carpets where the images would be walked upon, was considered offensive to some of the Indigenous artists and their communities.

27.4 Importance for Indigenous artists

Moral rights provide some important rights to Indigenous creators in being able to protect the integrity of their works. An issue which has not been resolved by the current amendments is that Indigenous work may be "owned" collectively by a clan. Should the clan representatives have the right to take action for derogatory treatment of clan designs? Senator Aden Ridgeway has called for moral rights for communally owned Indigenous works. Senator Ridgeway put forward that "moral rights in relation to an Australian Indigenous cultural work, created by an Indigenous author, under the direction of an Indigenous cultural group, may be held and asserted by a custodian nominated by the relevant Indigenous cultural group as its representative..."¹¹⁴ Whilst not supported by the government or the opposition, the current government indicated it would consult further with Senator Ridgeway of the Australian Democrats Party and Indigenous arts organisations on the need for special legislative protection.

Duration

The right of attribution subsists until copyright ceases.¹¹⁵ Indigenous people argue that the period of for attribution should be in perpetuity.

Consent

An artist can consent to an act or omission and there will be no infringement if the author or person representing the author has consented to the act or omission.¹¹⁶ Artists are concerned that as part of the commissioning process, they will be asked to consent to the waiver of their moral rights.

Remedies

Available remedies include injunction; damages resulting from the infringement; a declaration that the author's moral rights have been infringed; an order for public apology, and an order for removal of any false attribution.¹¹⁷ Remedies are available to individual copyright owners and the rights of the clan group are not recognised.

¹⁰² Section 195AA, Copyright Act 1968

¹⁰³ Section 195AB, Copyright Act 1968

¹⁰⁴ Section 195AC, Copyright Act 1968

¹⁰⁵ Section 195AE, Copyright Act 1968

¹⁰⁶ Section 195AD, Copyright Act 1968

¹⁰⁷ Section 195AE (b) (c) (d), Copyright Act 1968

¹⁰⁸ Section 195AF, Copyright Act 1968

¹⁰⁹ Section 195AG(1) and Section 195AH(1) Copyright Act 1968 for cinematographic films. These sections require that the person dealing with the work or reproduction or film have knowledge that the work has been so altered.

¹¹⁰ Section 195AG(2) and AH(2) Copyright Act for cinematographic films.

¹¹¹ Sections 195AJ(a) and 195AK(a), Copyright Act 1968

¹¹² Section 195AK(b), Copyright Act 1968

¹¹³ Section 195AS(1), Copyright Act 1968. Matters to be taken into account in determining whether the treatment was reasonable in all the circumstances are listed in s 195AS(2)(3) Copyright Act 1968

¹¹⁴ Hansard, Australian Senate, 8 December 2000

¹¹⁵ Section 195AM, Copyright Act 1968

¹¹⁶ Sections 195AW (film or work included in a film) and 195AWA (not a film or included in a film) Copyright Act 1968

¹¹⁷ Section 195AZA(1), Copyright Act 1968

The resale royalty or the *Droit de Suite* (as it is called in French) is the right of an artist to receive a percentage of the resale price of an original artistic work. The resale royalty aims to allow visual artists to benefit from the buying and selling of their artistic works in the same way that the collector benefits. In addition, musicians and writers benefit from the publication and reproduction of their works. Proponents of the resale royalty argue that visual artists should also receive similar benefits from subsequent transactions of their works.¹¹⁸

The scheme would provide economic returns to artists generally, however given the large increases in resales of Indigenous artworks, it is often argued that the resale royalty would be of great benefit to Indigenous artists. In 1999, Kumanjyayi Tjupurrula's *Water Dreaming at Kalipinyapa* was sold at auction for a record amount of \$486,500 breaking its own record of \$206,000 in 1997.¹¹⁹ The work was originally bought in the 1970s for \$150.

The Berne Convention for the Protection of Literary and Artistic Works is an international treaty on intellectual property rights. The Berne Convention provides that "the author, or after his death, the persons or institutions authorised by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work."¹²⁰ The Berne Convention states that the resale royalty may be claimed in a country who is signatory to that Convention only if:

- legislation in the country to which the author belongs so permits; and
- to the extent permitted by the country where the claim is made.

The introduction of the resale royalty is optional and the procedure for collection and amounts collected are matters for determination by national legislation.

Some countries have introduced the resale royalty including France, Germany and in the USA, the State of California. In France, the artist is entitled to 3% of the total resale price with a threshold of 100 francs, for sale at public auction or through a dealer.¹²¹ In California, the US Californian Resale Royalties Act 1977 makes it compulsory to pay 5% of the resale price of fine art, resold over \$1,000. Resales must have occurred either during the life of the artist or within 20 years after his or her death.¹²² The European Union has also recently adopted the resale

royalty. In Australia, some galleries have voluntarily implemented resale royalties to artists. For example, World Vision recently auctioned an Aboriginal Arts Collection which will distribute a percentage of sales to back to the Indigenous artists and their families and communities.

A report by the Australian Copyright Council in 1989 investigated whether resale royalty regulations are appropriate for Australia. The report supported the principle of a resale royalty as "a mechanism for encouraging creative endeavour, by rewarding visual artists with a share in the increasing value of their creative product."¹²³ The report recommended that there should be informed public debate in conjunction with public education about the resale royalty scheme to confirm its importance and gauge public support. Secondly, the report recommended that consideration be given to the most appropriate ways of affecting the resale royalty. Towards this objective, the Council recommended the establishment of an artists' collecting society. Viscopy, now established, has a view to continue research and development on the resale royalty in the future.

29 Indigenous cultural and intellectual property rights

According to the *Our Culture: Our Future Report*, Indigenous Cultural and Intellectual Property refers to Indigenous Peoples' rights to their cultural heritage. Heritage comprises all objects; sites and knowledge (both tangible and intangible), the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory.¹²⁴

Such heritage includes:

- literary, performing and artistic works (including music; dance; song; ceremonies; languages; symbols and designs, narratives and poetry);
- scientific; agricultural; technical and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna);
- spiritual knowledge;
- all items of movable cultural property including burial artefacts;
- Indigenous ancestral remains;
- Indigenous human genetic material (including DNA and tissues);

¹¹⁸ Simpson, Shane, *The Visual Artist and the Law*, (2nd edition), The Law Book Company, Sydney 1989, p 149, see also Australia Copyright Council, p 8

¹¹⁹ Maslen, Geoff, "Sold: Indigenous painting doubles own record", Sydney Morning Herald, 22 June 2000

¹²⁰ Article 14ter, Berne Convention of Literary and Performing Arts

¹²¹ As cited by the Australian Copyright Council, *Droit de Suite, The Art Resale Royalty and its Implications for Australia*, A Report Commissioned by the Australia Council and the Department of the Arts, Sport, the Environment, Tourism and Territories, February 1989.

¹²² Civil Code section 986 covers resales of paintings, sculptures, drawings and original works of art in glass. Either the seller must be a Californian resident or the resale must have taken place in California. The Artist must also be either an American citizen or if not, have been a California resident for the past 3 years

¹²³ Australian Copyright Council, *Droit de Suite, The Art Resale Royalty and its Implications for Australia*, A Report Commissioned by the Australia Council and the Department of the Arts, Sport, the Environment, Tourism and Territories, February 1989, p 6

¹²⁴ This definition adopts and expands upon Madam Erica Irene Daes, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and Chairperson of the Working Group of Indigenous Populations, Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples, E/CN.4/Sub.2/1993/28, 28 July 1993

- cultural environment resources (including minerals and species);
- immovable cultural property (including Indigenous sites of significance, sacred sites and burials); and
- Documentation of Indigenous people's heritage in all forms of media (including scientific, ethnographic research reports, papers and books, films, sound recordings)

The heritage of an Indigenous people is a living one and includes items that may be created in the future based on that heritage. Any definition of Indigenous Cultural and Intellectual Property should be flexible to reflect the notions of the particular Indigenous group and the fact that this may differ from group to group and may change over time.

29.1 Why protect Indigenous cultural and intellectual property?

There is a need to maintain Indigenous cultures so that there is something to pass on to future generations. Unwarranted appropriation of Indigenous cultural and intellectual property can undermine the integrity of Indigenous cultures and remove cultural issues from the control of Indigenous people. Indigenous people must be able to protect Indigenous cultural and intellectual property from the threat of assimilation by mass media; new technologies and globalisation.¹²⁵

There is also an economic rationale. The commercial use of Indigenous arts has led to exploitation by persons outside Indigenous communities. Indigenous people seek the right to receive benefits from the exploitation of their artistic works and claim the right to control its commercial use.

29.2 What rights do Indigenous Peoples want recognised?

A report on Indigenous Cultural and Intellectual Property rights entitled *Our Culture: Our Future*¹²⁶ listed the following rights Indigenous people require to their cultural and intellectual property:-

- the right to own and control Indigenous cultural and intellectual property;
- the right to define what constitutes Indigenous cultural and intellectual property and/or Indigenous heritage;
- the right to ensure that any means of protecting Indigenous cultural and intellectual property is premised on the principle of self-determination, which includes

the right and duty of Indigenous peoples to maintain and develop their own cultures and knowledge systems and forms of social organisation;

- the right to be recognised as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the past, or developed by them in the future;
- the right to apply for protection of Indigenous cultural and intellectual property rights, which where collectively owned, should be granted in the name of the relevant Indigenous community;
- the right to authorise or refuse to authorise the commercial use of Indigenous cultural and intellectual property in accordance with Indigenous customary law;
- the rights to prior informed consent for access, of, use of and application of Indigenous cultural and intellectual property including Indigenous cultural knowledge and cultural environment resources;
- the right to maintain the secrecy of Indigenous knowledge and other cultural practices;
- the right to benefit commercially from the authorised use of Indigenous cultural and intellectual property including the right to negotiate terms of such usage;
- the right to full and proper attribution;
- the right to protect Indigenous sites including sacred sites;
- the right to prevent the derogatory, offensive and fallacious uses of Indigenous cultural and intellectual property in all media including media representations;
- the right to preserve and care, protect, manage and control Indigenous cultural objects, Indigenous Ancestral remains, Indigenous cultural resources such as food resources, ochres, stones, plants and animals and Indigenous cultural expressions such as dances, stories, and designs;
- the right to control the dissemination, reproduction and recording of Indigenous knowledge, ideas, and innovations concerning medicinal plants, biodiversity, environment management;
- the right to control the recording of cultural customs and expressions, the particular language which may be intrinsic to cultural identity, knowledge, the skill and teaching of culture.

29.3 Legal protection of Indigenous cultural and intellectual property

The *Our Culture: Our Future* Report found that the Australian legal system does not adequately protect Indigenous cultural and intellectual property. This section

¹²⁵ Chaudhuri, Dr Shubha, Director, Archives and Research Centre for Ethnomusicology, American Institute of Indian Studies, presentation on "The Experience of Asia" at UNESCO/WIPO Forum on the Protection of Folklore, 1997.

¹²⁶ Janke, Terri, *Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property Rights*, Michael Frankel & Company, Sydney, 1999. See website www.icip.lawnet.com.au

will discuss how copyright relates to Indigenous cultural expression such as artistic works, songs and dance and cultural information, however, it should be noted that there are other laws such as patents, trade marks and cultural heritage laws, all of which inadequately provide legal protection for Indigenous cultural and intellectual property.

29.3.1 Copyright¹²⁷

Copyright is one area of law that affects the ownership, dissemination and reproduction rights of Indigenous cultural and intellectual property. It is generally considered inadequate in protecting Indigenous cultural material for the following reasons:

- *Material form*

Copyright only **protects** expression and not ideas. To be protected, a story, song or piece of information must be written down, or in some material form, like a recording. The underlying story, which is the basis of ownership for Indigenous people, is not protected. In the past, many Indigenous people have informed researchers, anthropologists about Indigenous knowledge. The researcher has recorded them and embodied them in reports, books etc. Copyright rests with the recorder of the knowledge - the informer does not own copyright of that written expression.

- *Author to be identified*

Copyright also requires that an author be identified. There may be a family or group that claims belonging to a particular Indigenous design or image. It may be that a particular image was a gift from the creator.

- *Communal ownership*

Copyright does not recognise communal ownership. Ownership is seen as being an individual and economic right.

- *No special protection for sacred knowledge*

There is no special protection under copyright for secret sacred knowledge.

- *Duration and public domain knowledge*

Copyright only protects works for 50 years after the death of the author. Many Indigenous images, works and knowledge come from long ago. Such material and knowledge is considered to be in the public domain. This means that it is considered available to everyone

to use freely and without seeking prior permission and without having to negotiate terms for use, including payment of royalties.

29.4 Communal ownership

Indigenous artistic expression often stems from a social base. Indigenous pre-existing clan designs, for instance, have been handed down over generations of refining skills and techniques. Indigenous clan designs and images are often communally developed and owned, and are evolving continuously. Issues of communal ownership in Indigenous artistic works were explored in the case, *Bulun Bulun & Anor v R & T Textiles Pty Ltd.*¹²⁸

LEGAL CASE STUDY 4: *Bulun Bulun vs R & T Textiles*

The work of Johnny Bulun Bulun, a famous Indigenous artist from Arnhem Land, Magpie Geese and Water Lilies at the Waterhole (the Artwork) was reproduced on fabric imported into Australia by R & T Textiles (the Company) without his permission. In settlement of the infringement claims, the Company consented to various orders and declarations and the case proceeded on a series of legal arguments aimed at exploring issues of communal ownership of copyright in artistic works.

The Artwork incorporated “traditional ritual knowledge” belonging to the Ganalbingu people. Mr Bulun Bulun gave evidence that whilst he is permitted by Ganalbingu law to create the Artwork, it is also his duty and responsibility to create such works, as part of his traditional land ownership obligations in accordance with Ganalbingu custom and law. Further to this role, Mr Bulun Bulun stated that he was obliged to consult with other traditional owners on certain kinds of reproductions of the painting. Mr Bulun Bulun gave evidence that any reproduction of the pre-existing design that was not subject to proper consultations threatened the framework of Ganalbingu society. Based on this relationship, M*¹²⁹, a co-applicant to the proceedings, claimed an equitable interest in the copyright of the artistic work that entitled Mr M*, on behalf of the Ganalbingu people, to claim relief for unauthorised reproduction of the artistic work.

The court dismissed Mr M*'s claim for equitable ownership stating that unless the artistic work is a “work of joint ownership¹³⁰” where one or more artists created the work, there is no communal ownership in an artistic work. In this case, Justice von Doussa considered that there was no evidence to suggest that any person other than Mr Bulun Bulun was the creative author of the artistic work.

¹²⁷This is a brief statement of the law for the purposes of discussion only. For more information, see the *Our Culture: Our Future Report* or consult a legal adviser.

¹²⁸(1998)3(4)AILR 547

¹²⁹now deceased.

¹³⁰within the meaning of s 10(1) of Copyright Act 1968

The Court did consider however, that Mr Bulun Bulun owed under fiduciary duty to Mr M* and the Ganalbingu people to protect the ritual knowledge which he has been permitted to use under customary law. Whilst Mr Bulun Bulun had the right to depict the designs, he had a fiduciary obligation to others in his clan group to ensure that the image is reproduced in ways that respect the integrity of the culture and the knowledge. Justice von Doussa said that if the artist breached this obligation, the clan group had a right to bring an action “in personam” against the artist to enforce the obligation. In this instance, however, the court considered that Mr Bulun Bulun had fulfilled this obligation by taking legal action against the infringers to stop the unauthorised reproduction of clan designs. Therefore, there was no reason for the Court to provide any additional remedy to the Ganalbingu people.

Hall argues that the traditional custodians’ interest is analogous to a mere equity which in certain restricted circumstances may allow the Indigenous traditional custodians to act directly to protect their interest in an artwork.¹³¹ The Court itself identified circumstances where the artist does not take appropriate action against infringements or where the artist cannot be identified or found. Hall further suggests that, for the equity to be enforceable, it will generally be necessary that those who deal with the copyright in a work have notice of the custodian’s interest.

29.4.1 What can an Indigenous community do to give notice?

To rely on the mere equity referred to in the Bulun Bulun Case, Indigenous custodians must show that the infringing party was on notice of their rights to the copyright work. Sally McCausland recommends that to be certain, Indigenous custodians should give express and clear notice of their interest to third parties.¹³² She provides a draft form of notice as follows:

NOTICE OF CUSTODIAL INTEREST OF THE {NAME} COMMUNITY

The images in this artwork embody ritual knowledge of the {NAME} community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that has not been authorised by the custodians is a serious breach of the customary laws of the {name} community, and may breach the Copyright Act 1968 (Cth). For enquiries regarding the permitted reproduction of these images, contact {community}.¹³³

30 Dealings in copyright

The copyright in an artistic work exists as a separate piece of property than the physical painting or artistic work. The artist can sell, license and deal with the copyright in the artistic work in an effort to reap commercial return.

30.1 Selling copyright

Like other forms of property, copyright can be bought and sold. Assignments of copyright must be in writing. An unlimited assignment of copyright gives the buyer the full copyright in the artistic work. This is the right to reproduce and authorise others to reproduce the artistic work for the copyright period (50 years after the death of the artist), all over the world and in all media. It is possible to limit assignment also. Artists should be aware that once copyright is assigned, all copyright rights to control reproduction and dissemination of the artistic work are relinquished. The assignment of copyright is not recommended, if the artist wishes to exercise rights over a work.

30.2 Licensing copyright

An artist can license the copyright in an artistic work to others to reproduce; sell; distribute and import his or her artistic work. Rights can be split into categories of:

- purpose (eg: limited to media);
- time (eg: limit of years);
- territory (eg: limited only to Australia).

Artists can seek to negotiate the rights for such use, taking into account fees; royalties; moral rights and attribution issues.

30.2.1 Exclusive vs non-exclusive licence

A licence given to a third party at the exclusion of others is an Exclusive Licence. An Exclusive Licence must be in writing and signed by the copyright holder. For instance, under a written contract an artist can grant to a t-shirt maker the exclusive right to reproduce his or her design. This means that no other person or manufacturer can reproduce that particular design.

A Non-Exclusive Licence is a licence that is given to a third party that allows the artist to also grant others to reproduce the same artistic work. It is not necessary for this type of licence to be in writing and can be by word of mouth or implied from the conduct of the artist. For

¹³¹Hall, Michael “Case note: Bulun Bulun v R & T Textiles” (1998)3 (16) Copyright Reporter 124

¹³²McCausland, Sally “Protecting Communal Interests in Indigenous Art works after the Bulun Bulun Case”, Indigenous Law Bulletin, July 1999, page 5

¹³³Ibid, page 4

example, an artist can orally grant a Non-Exclusive Licence to ABC Publishing Company to reproduce an artistic work on the cover of a magazine. The artist can also authorise other publishers to reproduce the artistic works in their publications.

30.3 Licensing issues and Indigenous art

There may be certain considerations to be taken into account when licensing works. Indigenous artists should ensure that any licensed rights granted to the licensor are not likely to conflict with personal or cultural obligations. Any conditions on use should be clearly notified and included as terms of a written agreement.

CASE STUDY 5: Yumbulul vs Reserve Bank

These issues were discussed in the case *Yumbulul v Reserve Bank of Australia* (1991).¹³⁴ Mr Yumbulul created a Morning Star Pole under the authority given to him as a member of the Galpu clan group. The Pole, a funerary object, was sold to the Australian Museum for public display. As part of an agency agreement, Mr Yumbulul licensed his reproduction rights to the Aboriginal Artists Agency. The right to reproduce the pole was subsequently licensed to the Reserve Bank of Australia to reproduce on the Bicentennial \$10 note.

Mr Yumbulul received considerable criticism from his community for allowing this to happen. According to the traditional custodians, such use exceeded the authority given to him under Aboriginal customary laws. While it was permissible to permanently display the pole to educate the wider community about Aboriginal culture, it was not considered culturally appropriate for such a sacred item to be reproduced on money.

Mr Yumbulul initiated action in the Federal Court against the Aboriginal Artists Agency and the Reserve Bank. The Court found Mr Yumbulul mistakenly believed that the licence to the Aboriginal Artists Agency and the Reserve Bank would impose limitations on the use of the pole similar to those in Aboriginal customary law. Mr Yumbulul alleged that he would not have authorised the licence to the Reserve Bank had he fully understood the nature of it. However, the Court ruled that there was insufficient evidence to establish this. In reaching its decision the Court noted that "Australia's copyright law does not provide adequate recognition of Aboriginal community claims to regulate the reproduction and use of works which are essentially communal in origin."¹³⁵

31 Contracts

A contract is a legally binding agreement. Each transaction involving the copyright of an artistic work is a contract. It is not necessary that the contract be in writing to be binding. For example, you can orally agree with a publisher to reproduce your artwork in return for a fee. However, what happens if the artwork is reproduced again without your permission, and without a further fee, and the publisher alleges that this was part of the deal? A written agreement leaves less room for misunderstanding.

31.1 Licence agreements

A licence agreement is a written agreement or contract that sets out the terms and conditions for a licensing arrangement. These terms and conditions can be negotiated and should be read carefully, and independent legal advice sought, before signing. Clauses often included are:

Payment/Fee

- The amount to be paid and the manner of payment should be clearly stated. For instance, a fee may be paid in instalments; up-front; on completion, or on delivery of an artistic work;

Copyright

- The agreement should clearly state the copyright ownership and licensing rights granted. For instance, copyright should be retained by the author and the nature of the licensed rights should be stated;

Nature of Licence

- Is the licence exclusive or non-exclusive?
See 12.2.1 for distinction between these;

Territory

- The territory (location) to be covered in the licence should be stated. Obviously an agreement that gives world rights is much different than one that is for Australia only;

Purpose

- The purpose of the licence should also be clarified. For example, if a publisher wants to use an artwork for the cover of a book, the purpose of the licence might be for the cover of the book or for reproduction in electronic form to be published on the Internet. These are quite different purposes that should be clarified at the time when permission is being sought and granted;

¹³⁴(1991) Intellectual Property Reports 481.

¹³⁵Ibid at 490.

Time

- The time period for the licence (duration of licence) should also be stated. Copyright in an artistic work lasts for 50 years after the death of the artist. It is possible to divide rights into terms. For instance, an artist can grant another person the rights to reproduce your artistic works on t-shirts for three years. After the end of three years, the licensed rights cease;

Alteration

- Issues as to alteration of the work should also be addressed. This is especially important for Indigenous artists where cultural integrity issues are of foremost concern;

Attribution

- Credit and attribution clauses should also be included which provide for the artist's name and/or clan affiliation and any other information to be included with each reproduction of the work;

Warranty

- Often there is a clause which requires the artist to warrant that he or she is the author of the original artistic work;

Termination

- A termination clause deals with what happens if the agreement is terminated. For instance, whether the artist is entitled to reasonable pay for work completed up to the date of termination, and whether rights are to return to the artist;

Indigenous Cultural and Intellectual Property Issues

- It is optional whether to include specific clauses dealing with issues relating to cultural heritage. For instance, a clause ensuring that the artist's community can continue painting certain images might state:-

"Nothing contained in this agreement shall affect the rights of {INDIGENOUS GROUP} to use, practice and maintain their Indigenous cultural practices."

The Arts Law Centre of Australia gives advice on contracts and has some standard contracts that are available for sale.

31.2 Agency agreements

An agency is a contractual relationship between a principal (the artist) and an agent. The artist gives the agent the

authority to enter into agreements on his or her behalf. An agency can be created orally or in writing, and can be implied by the conduct of the parties.

The following terms are often found in written agreements:¹³⁶

Term

- The agreement should set out the term of the agency, eg the number of years;

Nature of Agency

- Is the agency exclusive or non-exclusive? Do you want other agents to represent your works as well? If so, the agency should be non-exclusive;

Territory

- State the territories in which the agent will act for you. For example, an agency for a state or territory is quite different from an agency that applies to the world;

Commission

- The agreement should set out the details of commission paid to agents. Agents are generally paid by commission on gross income received on behalf of the principal.

31.3 Prior informed consent

When entering into agreements, the principle of prior informed consent should be foremost in the minds of the parties. The principle of prior informed consent provides that consent can only be given after receiving full disclosure regarding the reasons for the proposed use; the details and extent of use; the potential risks involved and the full implications that can be realistically foreseen.

Contracts should be explained to Indigenous artists prior to entering, and opportunities given for negotiation of rights. The seeking of independent legal advice should be encouraged. Bodies such as the National Indigenous Arts Advocacy Association and the Arts Law Centre of Australia may be able to provide some assistance. The entering into written contracts should be based on principles of fairness in an effort to eradicate the inclusion of oppressive conditions (an example might be: the assignment of copyright in all past, present and future art works of an artist. If an artist signs an agreement that includes this term, they are relinquishing their copyright to the artistic work).

¹³⁶For more information see, "Agency Agreements" in ART + LAW, March 2000, p 11

31.4 Viscopy

Viscopy is a voluntary collecting society for visual artists. Artists can elect to join by entering into a licence agreement with Viscopy either as a:-

- Full member. Viscopy can authorise the copying of artistic works and collect fees on their full member's behalf; or
- Secondary rights member only. This gives Viscopy authority to collect and distribute fees under the educational copying scheme.

Fees are then distributed to artists twice a year. Viscopy charges an administration fee. Artists or their heirs¹³⁷ can become members.

Viscopy represents a number of Indigenous artists including artists from Yirrkala, Balgo and Ramingining. Organisations, galleries and other parties wanting to secure rights from Viscopy's Indigenous artist members can apply to Viscopy for information on clearance procedures and rates.

32 Trade marks

32.1 What is a trade mark?

A trade mark is a sign used to indicate the trade origin or source of goods or services. A sign includes any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent.¹³⁸ Trade marks are used to distinguish the goods and services of one trader from those of another.

Under the Trade Marks Act 1995, a person can apply to register a trade mark. Once registered, the registered owner will be granted a type of property right to use that trade mark in association with his or her trade and in accordance with the class of goods and services approved by the Trade Marks Office. Trade marks are personal property¹³⁹ and can be licensed, assigned and transmitted.

It is not necessary to register a trade mark. Unregistered marks may be protected under common law rights of passing off. If a trade mark is not registered and another person uses it, the owner may have to take passing off action under the common law to stop the infringement. They will have to prove that they have developed a reputation in the trade mark and that use of the other trade mark would be likely to confuse or deceive the public. This can be difficult and expensive. If the trade mark is registered, the rights under the Trade Marks Act

1995 apply. A letter from a lawyer or patent attorney pointing out the infringement may be all that is needed to deter the infringer.

The rights granted under the Trade Marks Act 1995 exist so long as the registered owner continues to use the mark in the course of trade. Registration is for an initial 10 years.¹⁴⁰ Renewals of registration must be made. This means effectively trade mark rights can be held and maintained so long as the registered owner continues to register every 10 years and continues to use the mark in the course of trade.

32.2 Indigenous use of trade marks

Indigenous arts centres and organisations use trade marks to enhance their reputations eg Papunya Tula and Keringke Arts. Some are registered trade marks and others are common law marks.

Indigenous people and organisations may register their designs, words and other cultural material as trade marks if they want to use such marks in the course of trade. This type of protection might assist commercial users of Indigenous cultural material, however a problem for Indigenous individuals and organisations using trade mark law for protection is that the trade mark must apply to the registered owner, who has monopoly rights. Often Indigenous people are reluctant to claim monopoly rights over cultural material which belongs to the group collectively or words and symbols to which a group of artists may be entitled. However, where consent is given by the group, an appropriate trade mark can assist Indigenous artists protect their cultural products.

32.3 Certification marks

A certification mark is a sign used to distinguish goods or services which possess a certain quality, accuracy or characteristic. The distinguishing characteristics may include geographic origin, quality of material used or the mode of manufacture.¹⁴¹ Use of the mark is certified by the registered owner of the certification mark, or by representative organisations approved by the registered owner in accordance with the rules for use.

The Label of Authenticity is a certification trade mark which can be attached to goods and services to certify that a work is authentic; that is, it is created, authored or produced wholly by an Indigenous person. Indigenous artists wanting to use the label can apply for a licence to use the Label of Authenticity. To use the label, artists pay an annual registration fee to be registered as a certified Indigenous creator. There are also costs to purchase the labels themselves.

¹³⁷ Copyright in artistic works lasts for 50 years after the death of the artist.

¹³⁸ Section 6, Trade Marks Act 1995

¹³⁹ Section 21(1), Trade Marks Act 1995

¹⁴⁰ From the date of the application. Section 72(3) Trade Marks Act 1995

¹⁴¹ Section 169(b), Trade Marks Act 1995

Where a work is produced in accordance with customary law, the rules of the Label make provisions for relevant permission to be sought by the artist, from traditional owners. The rules state:-

“In the case of Works ...which purport to encode, depict or reflect the ceremony, law, knowledge, customs, stories, dreaming or rituals of traditional owners of particular land or to some other sense belonging to that land, the Label of Authenticity will only be used in connection with those Works .. if they are produced in accordance with any customs or law of the relevant traditional Indigenous owners of the land in question and if the Certified Indigenous Creator(s) who authored the Works ..has obtained any necessary permissions or approvals required under those customs or law for the creation, publication, sale and performance or other proposed details in the Works....¹⁴²”

There is a second certification mark in the Indigenous art Labelling System - the Collaboration Mark which denotes that a product or service is derived from a work of art created by an Indigenous person, and has also been reproduced and manufactured as a result of the joint efforts of an Indigenous and Non-Indigenous person under a fair agreement.

The Labelling System is administered by the National Indigenous Arts Advocacy Association. (See Appendix 6 for contact details).

33 Registered designs

The Designs Act 1906 protects two and three-dimensional items for industrial or commercial purposes. A registered design gives the registered owner a legally enforceable right to use the registered product's design to gain a marketing edge. It also prevents others from using the design without your agreement.

A design refers to the “features of shape; configuration; pattern or ornamentation applicable to an article, being features that, in the finished article, can be judged by the eye, but does not include a method or principle of construction.¹⁴³” An “article” as defined under the Act means “any article of manufacture”.

Under the Designs Act 1906, a person may register a design to protect the visual appearance of manufactured products. To register a design, it must be applied to an article. It must be “new”, in that it is not known or previously used in Australia; or “original”, in that it has never been applied to the particular product, although

it may have been applied to another type of product.¹⁴⁴ Many Indigenous design items may have difficulty in meeting the “new” requirement. For instance, the design of the traditional didgeridoo could not be registered because it is already known and previously used in Australia.

Copyright covers designs that are essentially artistic works, where design registration is not available. A design must have an industrial application.

Provisions in the Designs Regulations allow the Registrar to exclude the registration of designs for articles that are primarily literary or artistic in character.¹⁴⁵ The following products are primarily literary or artistic in character and not appropriate for design registration:

- book jackets;
- calendars;
- certificates, forms or other documents;
- dressmaking patterns;
- greeting cards;
- leaflets;
- maps or plans;
- postcards;
- stamps;
- transfers.

To register a design, you must apply to the Designs Office of IP Australia (see Appendix 5 for contact details). The length of protection is for 12 months but you can extend protection for up to 16 years. Only the owner of the design can apply. The owner of the design can be:

- the author of the design (i.e. the person who conceived the design);
- the employer of the author, if the author made the design in the course of his or her employment;
- the person who contracted the author to make the design for him or her; or
- the person to whom the author has assigned the design (the assignment must be in writing).

The Designs Act 1906 may offer some protection for commercially applied Indigenous designs which meet the “new” and “original” requirements. Once registered, these designs are protected from obvious or fraudulent imitations of the registered designs.¹⁴⁶

¹⁴² Rule 4.1, NIAAA's Label of Authenticity trade mark, Certification Rules.

¹⁴³ Defined by section 4(1) of the Designs Act 1906

¹⁴⁴ Section 17(1), Designs Act 1906

¹⁴⁵ Sections 4(1) and 17(2) of the Designs Act 1906 and Regulation 11(1) of the Design Regulations 1982

¹⁴⁶ Section 30, Designs Act 1906

Where copyright subsists in an artistic work and a corresponding design is or has been registered under the Designs Act 1906, it is not an infringement of that copyright to reproduce the work by applying that, or any other, corresponding design to an article.¹⁴⁷

34 Selling fakes

An issue which affects all Australian artists is the faking of their work. However, recent reports of fakes within the Indigenous visual arts market has given cause for concern. In many cases, Indigenous artists are in remote locations and cannot track the selling of fakes in galleries thousands of miles away. Unfortunately in some cases the faking has been alleged to be done by artist's agents. A recent case where this was alleged to have occurred is *R v O'Loughlin*, a case heard in the New South Wales Local Court against a dealer alleged to have faked works of his client, Clifford Possum Tjapaltjarri. He was charged with obtaining a benefit by deception under the New South Wales Crimes Act.

In other cases where buyers have found that their works are fakes, they have sued the dealer under trade practices and sale of goods legislation. This is easier to do because the standard of proof is lower and does not require proof beyond reasonable doubt, that the dealer deliberately sold a fake.

In order to avoid the problem of fakes, some art centres are supplying provenance documents and even photographs of the artist in front of the painting. It is to be expected that these practices will increase in order to encourage buyer confidence.

The issue of fakes, where a work is not the work of the artist, is to be distinguished from the issue of collaborative works where an artist allows others to paint on a work as part of a culturally acceptable practice. The fact that collaboration or assistance in applying designs have occurred, should not affect the attribution of authorship to the artist who has ultimate responsibility for executing the painting. Alternatively, the work can be attributed as a work of joint authorship, as occurs, for example, with song writing, where a number of people contribute to the development of a work.

35 Trade Practices and Passing Off

The Trade Practices Act 1974 (and fair trading legislation in each state and territory) prohibits misleading and deceptive conduct and may provide some protection

against false labelling and marking practices involving the fallacious use of Indigenous cultural and intellectual property. If a business is misleading consumers into thinking that they are buying authentic Indigenous products for example, it may be possible to take legal action against them. Another possibility is that the business is making a misleading claim to be affiliated with or endorsed by a particular Indigenous clan or art centre when it is not, for example, if the business is selling products under a name very similar to an Indigenous art centre's name, or even possibly if the business is using a symbol which is associated with a particular clan. It all depends on whether consumers might be misled or get a false impression about what they are buying.

However, there have been no court cases where this has occurred, as many defendants simply add a disclaimer to their swing tags or disappear when threatened with action.

Passing off is a similar but limited resource for Indigenous communities because it has to be proved that damage to goodwill and reputation has occurred through deception by the defendant.

36 Native title and rights to land

The right to paint certain images in Indigenous cultures is linked to Indigenous Peoples' rights to land. Therefore native title and rights to land are important legal issues for Indigenous artists.

Native title was recognised in the *Mabo v Queensland*¹⁴⁸ decision in 1992. Since then the Native Title Act 1993 (Cth) has prescribed procedures for native title claims and determinations. Intellectual property rights have been argued to be an incident of native title.¹⁴⁹ In *Bulun Bulun v R&T Textiles*¹⁵⁰, Justice von Doussa of the Federal Court considered whether the right of ownership to clan designs and ritual knowledge embodied in an artistic work could be an incident of native title. He rejected this for the following reasons.

- Firstly, the applicant in that case had not followed the procedures under the Native Title Act for a determination of native title. Hence, the court did not have jurisdiction to make a determination;¹⁵¹
- Secondly, he stated that the legal principles governing ownership of artistic works are separate statutory and common law regimes.¹⁵² Any recognition of customary law is complicated by the fact that the copyright law was subsumed by statute in 1912 in Australia. Justice von Doussa refused to contemplate any relationship between the two systems which would provide protection for

¹⁴⁷Section 75, Copyright Act 1968

¹⁴⁸*Mabo v Queensland (No 2)* (1992) 175 CLR 1

¹⁴⁹Gray, Stephen, "Wheeling, Dealing and Deconstruction: Aboriginal Art and the Land Post-Mabo", *Aboriginal Law Bulletin*, Vol 3, No 63, August 1993, p 10; Professor Kamal Puri, "Copyright Protection for Australian Aborigines in the Light of Mabo" in MA Stephenson and S Ratnapala (eds), *Mabo: A Judicial Revolution*, University of Queensland Press, p 157

¹⁵⁰*Bulun Bulun v R & T Textiles Pty Ltd* 41 IPR 513

¹⁵¹*Von Doussa J, Bulun Bulun v R & T Textiles Pty Ltd*, 41 IPR 513 at 523

¹⁵²*Von Doussa J, Bulun Bulun v R & T Textiles Pty Ltd*, 41 IPR 513 at 523-524

artistic works, as he considered such recognition might well serve to fracture a “skeletal” principle of our legal system.¹⁵³

In the *Miriuwung Gajerrong*¹⁵⁴ case, the judges agreed that “the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the ‘determination area’” was a native title right.

Native title claims may provide a means to protect cultural, and ultimately intellectual property, however, the application process is time consuming, proceeds slowly and requires the preparation and submission of large amounts of historical, cultural and genealogical information about the claim group members.

A large amount of traditional knowledge and cultural expression is generated by the claim process. Anthropologists who are generally engaged by the legal representative of the claimant group or the Native Title Representative Body gather much of the information. Recent cases have highlighted the importance of the terms of reference of the agreement between the anthropologist and the lawyer in order to restrict the information collected. Legal professional privilege protects information prepared where the ‘dominant purpose’ is litigation or giving legal advice.¹⁵⁵ This means that the material cannot be disclosed except in certain circumstances.

However, in native title claims which are often strongly contested by other stakeholders, the protection is put at risk by the rules of evidence. Information can be disclosed during the course of proceedings and it is then in the public domain.

As with land, there may be opposing Indigenous interests to Indigenous traditional knowledge and cultural expression. To clarify these interests, information should be sought directly from Aboriginal Land Councils and for Torres Strait Islander authorities and the National Native Title Tribunal.

37 Export of Indigenous cultural heritage items

The Protection of Moveable Cultural Heritage Act 1986 controls the export of objects that are important to Australia for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons. Some objects cannot be exported at all. The Act also allows Australia to return protected objects to other countries if they have been illegally imported.

According to the Department of Communications, Information Technology and the Arts, the aim of the legislation is to protect the national interest by keeping Australia’s most important heritage objects in the country

whilst at the same time attempting not to unnecessarily restrict Australia’s export trade or the international exchange of culture.¹⁵⁶ The Act relates only to the export of objects and does not affect the right to own or sell objects within Australia.

The Act controls the export of significant Indigenous Cultural Heritage. In 1999, changes were made to the National Cultural Heritage Control List¹⁵⁷ to ensure the protection of many important works of Aboriginal and Torres Strait Islander Heritage produced during the 1970s, for example, the early paintings of Papunya Tula Artists. The 1999 amendments reduced the age of Part 1 Objects of Australian Aboriginal and Torres Strait Islander Heritage from 50 to 30 years and Part 5 Objects of Aboriginal and Torres Strait Islander Fine and Decorative Arts to 20 years but increased values from \$5,000 to \$10,000.

37.1 National Cultural Heritage Control List

The National Cultural Heritage Control List lists categories of objects controlled by the Act. The regulations prohibit the export of Class A objects otherwise than in accordance with a Certificate of Exemption.¹⁵⁸ Class B objects may be exported provided an export permit is obtained prior to export.¹⁵⁹

The List includes:

Part 1 - Objects of Australian Aboriginal and Torres Strait Islander Heritage

Objects must be:

- of cultural significance to Aboriginal and Torres Strait Islander people;
- or made by Aboriginal and Torres Strait Islander people, and
- not an object made specifically for sale.

Indigenous log coffins, rock art and sacred and secret ritual objects are Class A objects.¹⁶⁰

Class B Objects include objects relating to famous and important Aborigines or Torres Strait Islanders and objects made on missions and reserves.¹⁶¹ An object must be at least 30 years old and not adequately represented in Aboriginal or Torres Strait Islander collections, or public collections in Australia. For example, a boomerang which is over 30 years old and made on a mission may require a permit. However, a souvenir boomerang produced for the tourist market would not.

¹⁵³Justice Von Doussa cited Justice Brennan in *Mabo v Queensland (No 2)* (1992)175 CLR 1 at 43 in 41 IPR 513 at 524

¹⁵⁴*State of Western Australia v Ward* FCA 191 (3 March 2000)

¹⁵⁵*Esso Australia Resources Ltd v Commissioner of Taxation* [1999]HCA 67 (Unreported Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Callinan JJ, 21 December 1999)

¹⁵⁶“Interested in exporting a heritage object from Australia? You may need a permit, and there are important changes to export permit requirements.” See Department of Communications, Information Technology and the Arts website www.dcita.gov.au

¹⁵⁷Regulation 4 of Protection of Moveable Cultural Heritage Regulations 1987, Schedule 1, National Cultural Heritage Control List, Categories of Objects.

¹⁵⁸Section 8(2)(a), Protection of Moveable Cultural Heritage Act 1986

¹⁵⁹Section 8(2)(b), Protection of Moveable Cultural Heritage Act 1986

¹⁶⁰Part 1.3, Regulation 4, Schedule 1, Protection of Moveable Cultural Heritage Regulations, 1987

¹⁶¹Part 1.4, Regulation 4, Schedule 1, Protection of Moveable Cultural Heritage Regulations, 1987

Part 2 - Archaeological Objects

Archaeological objects include any Indigenous or non-Indigenous object which is of significance to Australia and was in the same place for 50 or more years before being removed or excavated, and is not represented in at least two public collections by an object of equivalent quality.

Part 5 - Objects of Aboriginal and Torres Strait Islander Fine or Decorative Art

An “object of Aboriginal or Torres Strait Islander fine or decorative art” means an object made in the Indigenous tradition by an Aboriginal or Torres Strait Islander person. Objects of Aboriginal and Torres Strait Islander fine or decorative art purchased for over \$10,000 and more than 20 years old require a permit or certificate before they can be exported from Australia.¹⁶²

37.2 Penalties

Where a person exports an Australian protected object otherwise than in accordance with a permit or certificate, the object is forfeited.¹⁶³

Where a person knowingly exports or attempts to export an Australian protected object otherwise than in accordance with a permit or certificate, or if a person does not comply with conditions of a permit or certificate, that person is guilty of an offence punishable on conviction. For individuals, a fine not exceeding \$100,000 or imprisonment for a period not exceeding 5 years, or both, can be imposed. If the person is a body corporate, punishment is by way of a fine not exceeding \$200,000.¹⁶⁴

37.3 Obtaining permits and certificates

Applications for an export permit or Certificate of Exemption are made to the Department of Communications, Information Technology and the Arts. There is no application or permit fee. The process takes approximately 6 weeks.¹⁶⁵ Applications are referred to at least one Expert Examiner with expertise in the field, to assess the object’s cultural significance to Australia. The National Cultural Heritage Committee then considers the application and Expert Examiner report.¹⁶⁶ The Minister or delegate makes the final decision, after consideration of the Committee’s recommendation and Expert reports.

In June 1999, the Minister, acting on advice from the Committee, determined that the artwork “Water Dreaming” by old Walter Tjampitjinpa of Papunya Tula, was a protected object under the Protection of Moveable

Cultural Heritage Act, being of “such significance that it’s export would significantly diminish our nation’s cultural heritage.”¹⁶⁷ The artwork was subsequently acquired by the Tasmanian Museum and Art Gallery with the assistance of the National Cultural Heritage Account. The National Cultural Heritage Account is designed to facilitate public access to important cultural objects and to make them available for present and future generations of Australians.

Class B export permits are required for permanent export and temporary export. For instance, export for exhibition will require a temporary export permit. General permits allow Commonwealth or State public collecting institutions to temporarily export Class B objects from their collection.

Information, advice and application forms are available from the Department of Communications, Information Technology and the Arts (contact details at Appendix 5).

37.4 Overseas buyers

Overseas buyers of Indigenous art and heritage objects which come under the National Heritage Control List should ensure that galleries and auctioneers can produce permits and certificates to export Aboriginal and Torres Strait Islander heritage objects. If a work or object is produced specifically for sale, the overseas buyer only need hold an invoice to take the artistic work or object out of the country.

38 Wildlife import and export controls

Indigenous artistic works that incorporate items of Australian plant or animals may be subject to wildlife export and import controls. In 1999, ATSIC Commissioner Preston Thomas was unable to take carved emu eggs as a gift to host Kanaky leaders in Noumea because the relevant border authorities required a certificate stating that the eggs were bred in captivity at an approved management program.

In Australia, the Wildlife Protection (Regulations of Exports and Imports) Act 1982 controls the export of Australian plants and animals.¹⁶⁸ For example, to export any Australian native shell, a permit must be obtained from Environment Australia.¹⁶⁹ When planning an international exhibition or proposing a sale of Indigenous artworks incorporating plants or animals to overseas

¹⁶²Part 5 Regulations

buyers, you should contact Environment Australia's Wildlife Permits and Enforcement Section for information on any restrictions or permits required.

Applications are available from Wildlife Permits and Enforcement (see Appendix 5 for contact details). Fees are charged for permits depending on the species and relevant regulations.

There are also importation laws of other countries, which place restrictions on material that can be imported. For example, many feathered objects may be restricted from import or require quarantine. You should also contact the Department of Foreign Affairs and Trade regarding import laws of other countries.

39 Estate planning and wills

Given that copyright in an artistic work lasts for 50 years after the death of an artist, artists must consider estate planning issues. Many Indigenous artists die without a written will. As Indigenous art becomes profitable, the income accruing to deceased artists from copyright royalties can provide considerable income to family and community members. The management of copyright income and any actions over copyright infringement is therefore important.

The property of people dying without a written will is dealt with under Administration and Probate laws. There are provisions in the Administration and Probate Act (NT) 1993, that allow a person to claim an entitlement to the estate of an Aboriginal person who dies without a will, under the customs and traditions of the community or group to which the deceased person belonged, and the Public Trustee may take into account cultural laws in the administration of the estate.¹⁷⁰ However, there is a need for greater estate management and planning. Artists need to address the following issues in their wills:

- ownership of copyright;
- management of copyright permissions and collection of royalties.

It is important for Indigenous artists to plan for the management of their artistic works after their death. Where applicable, estate planning should observe Indigenous customary laws and practices.

The Arts Law Centre of Australia and NAVA have produced a booklet on Estate Planning which is soon to be released with the assistance of the Australia Council. Contact NAVA for more details.

40 Proposals for change

40.1 Stopping the ripoffs

In 1994, the then Attorney General, the Minister for Aboriginal and Torres Strait Islander Affairs and the Minister for Communications and the Arts, jointly released an Issues Paper, *Stopping the Ripoffs: Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples*.¹⁷¹ The Paper proposed several measures to overcome the inadequacies of current intellectual property laws in their application to Indigenous arts and culture. Such measures include the amendment to copyright and design law; amendments to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984; specific legislation and the establishment of an authentication mark. Although several submissions were received, there were no findings or recommendations made.

40.2 Our Culture: Our Future

In 1997, the Aboriginal and Torres Strait Islander Commission and the Australian Institute for Aboriginal and Torres Strait Islander Studies commissioned Terri Janke from Michael Frankel & Company, Solicitors to prepare an independent report on Indigenous Cultural and Intellectual Property Rights. The *Our Culture: Our Future Report: Report on Australian Indigenous Cultural and Intellectual Property Rights*¹⁷² reports on: -

- the rights and concerns of Indigenous Australians for their Cultural and Intellectual Property;
- protection under the current legal system;
- strategies for greater recognition and protection of Indigenous Cultural and Intellectual Property rights including legal and non-legal measures.

See 7 Other cultural protocol documents, and references above, including in 29 Indigenous Intellectual and Cultural Property Rights.

To read the full report see www.icip.lawnet.com.au

¹⁷⁰ Section 71B, Administration and Probate Act (NT) 1993

¹⁷¹ Commonwealth of Australia, *Stopping the Ripoffs: Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples Issues Paper*, October 1994, Prepared by the International Trade law and Intellectual Property Branch, Business Law Division, Attorney-General's Legal Practice.

¹⁷² Janke, Terri, *Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property Rights*, Michael Frankel & Company, Sydney, 1999. See website www.icip.lawnet.com.au

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APPENDIX 2: Useful Organisations

Below are some of the organisations which play an advocacy role within the visual arts sector, or which provide useful advice and information. There are many more - some which directly represent the Indigenous sector and others, which incorporate representation of the sector within their broader brief. Contact details for these organisations and others can be found at Appendix 6.

Arts Law Centre of Australia

The Arts Law Centre of Australia is the national community legal centre for the arts. Arts Law was established with the support of the Australia Council in 1983 to provide legal and business advice and referral services; professional development resources and advocacy for artists and arts organisations. Arts Law gives preliminary advice and information to artists and arts organisations across all artforms on a wide range of arts-related legal and business matters including contracts; copyright; business names and structures; defamation, insurance and employment.

Arts Law's legal officers provide telephone legal advice from Tuesday to Friday in two sessions a day: 9:30am-12:30pm and 2:00pm-5:00pm.

Initial telephone advice is free and can be accessed by callers outside the Sydney metropolitan area on a toll-free number. If the matter requires a solicitor to act on behalf of the artist, the Arts Law Centre can assist by recommending a suitably qualified solicitor from a national referral panel.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation set up to assist creators and other copyright owners to exercise their rights effectively and to raise awareness in the community generally about the importance of copyright.

The Council publishes a range of useful information sheets and practical guides including:

- *Protecting Indigenous Intellectual Property: A Copyright Perspective (March 1997);*
- *Indigenous Arts and Copyright.*

National Association for the Visual Arts (NAVA)

NAVA is the peak body representing and advancing the professional interests of the Australian visual arts and craft sector. Since its establishment in 1983, NAVA has been a powerful force in bringing about policy and legislative change to encourage the growth and development of the visual arts sector and to increase professionalism within the industry. It has also provided direct service to members through offering expert advice, representation and a range of other services. Amongst its other responsibilities, NAVA continues to advocate strongly for the Indigenous arts sector. The website Visual Arts Net (www.visualarts.net.au), initiated by NAVA, provides many useful links to the Indigenous art sector.

National Indigenous Arts Advocacy Association (NIAAA)

“NIAAA is a national Indigenous arts and cultural service and advocacy association which advocates for the continued and increased recognition and protection of the rights of Indigenous artists. NIAAA also provides culturally appropriate advice, information, referrals and support services to Indigenous artists and organisations.

NIAAA aims to increase the awareness of these policies throughout the broader community through undertaking large-scale ‘flagship’ projects, for example the ‘Carpets Case’ litigation and the development of the ‘Label of Authenticity’ trade mark. The success of such projects provides Indigenous artists with significant means towards the ultimate cultural and legal protection of their works of art.

The National Indigenous Arts Advocacy Association (NIAAA) is concerned about the number of non-Indigenous artists, writers and performers that have been incorporating Indigenous Australian cultural expression into their works. Non-Indigenous artists have employed images such as the rainbow serpent in their artwork. Specific Indigenous styles have also been used, such as the rarrk and x-ray styles. Even more flagrant is the usage of sacred images such as the wandjina and the distortion of significant cultural items such as the Torres Strait Islander headdress. These are distinctly

Indigenous images and designs and are associated with central themes in Indigenous Australian cultures.¹⁷³”

The National Indigenous Media Association of Australia (NIMAA)

“NIMAA is the peak national body that represents Aboriginal and Torres Strait Islander people, communities and organisations that work in the media and communications industry. NIMAA is recognised and supported by relevant Federal, State and Territory Governments, their respective departments, statutory authorities and non-government organisations as the national representative organisation for Indigenous media and communications sectors.

NIMAA aims to culturally, socially and economically empower Indigenous people through the provision of accessible and cost effective media and communications services and to inform the wider community about the rich cultures, heritage and goals of the Indigenous people of Australia. NIMAA was formally incorporated on March 23, 1993. However, it was conceived 10 years before that date when Indigenous media Australia wide saw the vital need for a central body to provide support and to represent Indigenous Media interests at all government levels by providing policy advice and direction for Indigenous people involved in the media industry.

NIMAA functions under the direction of a national executive with four industry committees representing Film; Television and Video; Community Broadcasting and Radio, Print Media and Multimedia. The NIMAA secretariat is based in Brisbane, Queensland. NIMAA deals with numerous projects in the Film, Television and Video industry.¹⁷⁴”

DESART

“Desart is an Aboriginal arts resource liaison, advocacy and lobbying unit that represents the interests of forty Aboriginal arts and crafts centres in central Australia. The membership spans the Northern Territory, Western Australia and South Australia.

The function of Desart is to provide industry specific information and practical assistance to art and craft centres

¹⁷³ From the NIAAA website

¹⁷⁴ From the NIMAA website

in the area of skills and professional development, and advice relating to grants and funding bodies. Desart liaises on behalf of the art centres with all spheres of government, peak arts and industry organisations, commercial and academic sectors, museums and galleries.¹⁷⁵”

**Association of Northern, Kimberley and Arnhem
Aboriginal Artists (ANKAAA)**

“ANKAAA is an Aboriginal Arts Advisory Organisation representing 24 Aboriginal art and cultural centres from the Kimberley and Top End regions. ANKAAA provides referral, advice and cultural support to its members. Membership is open to Aboriginal artists from the Top End and Kimberley regions of the NT.¹⁷⁶”

¹⁷⁵Visual Arts and Crafts Resources Directory, ATSIC, 1998, p 64

¹⁷⁶ibid

APPENDIX 3: Funding Organisations

ATSIC - Aboriginal and Torres Strait Islander Commission

ATSIC, the Aboriginal and Torres Strait Islander Commission, is a Commonwealth agency through which a wide range of funding for the Aboriginal and Torres Strait Islander community is devolved. It operates at both a national and regional level, and its activities are guided and managed by elected commissioners.

“The main objective of the Output Group, the Preservation and Promotion of Indigenous Culture, is to promote identification, preservation and development of Aboriginal and Torres Strait Islander arts, craft, and culture. This includes promoting general recognition of Aboriginal and Torres Strait Islander arts and cultures as vital elements of Australian culture. The component seeks to expand the opportunities for Indigenous people to engage in and promote their arts and crafts; and provide financial support to art centres, many located in remote communities. ATSIC recognises the significance of Aboriginal and Torres Strait Islander cultures and heritage, to both Indigenous and non-Indigenous Australians.

ATSIC’s funding of the Output Group, the Preservation and Promotion of Indigenous Culture is delivered through two specific programs, the National Arts and Crafts Industry Support Strategy (NACISS) and the Regional Arts and Culture Support.

Funding under NACISS is largely used to support community-based art centres that assist visual artists and craftspeople with materials, space and facilities for creation and production; documentation of work; copyright advice; contract advice; management and marketing, as well as the important cultural links with country. NACISS funds are also directed at nationally significant projects such as the development of a label of authenticity for Indigenous art and crafts; the production of a Visual Arts Resource Directory; the periodic update of the National Aboriginal and Torres Strait Islander Visual Artists Database; the production of publications on regional art forms, and selected activities promoting contemporary Indigenous art as Modern Australian Art.

The Regional Council Arts and Crafts element places emphasis on regional social and cultural activities such as festivals and local ceremonies; performing and visual arts projects, as well

as support for tourist oriented cultural centres. These projects are funded at the discretion of regional councils that reflect regional priorities.

All submissions for funding should be directed to the local ATSIC Regional Office.¹⁷⁷

Australia Council

“The Australia Council is a service organisation enriching the life of the nation by supporting and promoting the arts. The Australia Council was formed as an interim Council in 1973 and was given statutory authority by the Australia Council Act 1975. It replaced an earlier, non-statutory, body called the Australian Council for the Arts, which was established in 1968 as a division of the Prime Minister’s Department. The Council subsumed other arts-related government functions, such as the Commonwealth Literary Fund, which had supported needy writers since 1908, and the Commonwealth Art Advisory Board, which was set up in 1912 to develop a national art collection and, from 1927, to advise on matters relating to the visual arts. The Australia Council was granted considerably expanded functions and greater independence from government in its policy-making and funding roles than its predecessors were. As with similar bodies in Canada and New Zealand, the Australia Council’s structure and functions were based on those of the Arts Council of Great Britain.

The Australia Council’s primary responsibility is to help create an environment which encourages the creativity and development of Australian artists, and which provides greater access to arts and cultural activities for all Australians. It supports Australian artists and arts organisations to pursue artistic excellence in creating and presenting their work, to take advantage of opportunities to improve and develop their skills and to tour and promote their work to wider audiences. It directly supports young, emerging, developing and established artists through a range of grant programs offered across all artforms, and it encourages arts and non-arts organisations to support and present artists’ work, thereby expanding employment opportunities for all artists.

As a national cultural agency, the Council has a unique responsibility to reflect Australia’s evolving national identity

to its citizens and to the world. The Council’s national focus reflects the culture and creativity of both regional and urban communities, and it has a statutory obligation to ensure access to, and participation in, the arts by all Australians. The arts of Aboriginal people and Torres Strait Islanders are valued and supported; and communities across Australia are enriched by opportunities to incorporate the arts in local cultural life. The Council also maintains and develops cooperative arrangements with State and Territory arts funding authorities, local governments, and key international agencies in all its activities.

The work of the Australia Council has always been guided by two fundamental principles. The ‘arms length’ principle, which is enshrined in the Australia Council Act, determines that the Council is free to act autonomously and be independent of government. This ensures that decisions about specific grants are made at a distance from political processes.

The second principle is ‘peer assessment’, whereby decisions on policy, priorities and grant selections are made by artists and community representatives who are the peers of those being assessed. Peers are defined by the Council as people who, by virtue of their knowledge and experience, are equipped to make a fair and informed assessment of artistic work and grant applications.

Both principles have ensured the maximum integrity in decision-making in what can be controversial areas of arts development.

The Australia Council is committed to providing the best possible system of peer-assessed funding of creative work, and will continue to ensure that creativity and excellence in the arts flourish and that all Australians have access to the arts and to the stimulation and enjoyment the arts can bring.

The Aboriginal and Torres Strait Islander Arts Board assists Aboriginal and Torres Strait Islander people to claim, control and enhance their cultural inheritance. The Board supports this right through its grant categories and through the implementation of the national Aboriginal and Torres Strait Islander Arts Policy.

¹⁷⁷Information provided for this document by ATSIC

An Aboriginal person or Torres Strait Islander is defined by the Board as someone who is of Aboriginal or Torres Strait Islander descent, identifies as an Aboriginal person or Torres Strait Islander and is accepted as such in the community where he or she lives or comes from.

The Board supports the restoration; preservation; development and promotion of traditional cultural practices as well as the generation of new forms of artistic expression among Aboriginal and Torres Strait Islander people in urban and country areas and in all artforms. As Aboriginal and Torres Strait Islander cultures are living forces, each with their own dynamism and momentum, and not simply remnants of the past, the Board encourages these cultures to be a vital part of the experiences of Aboriginal and Torres Strait Islander peoples and a source of pride for all Australians.

While the Board targets its funding support to Aboriginal and Torres Strait Islander artists and communities, it also encourages Aboriginal and Torres Strait Islander people to seek support from the grant categories offered by the Funds of the Australia Council.

The Board is very concerned that over a period of years there has been strong evidence of appropriation of traditional imagery and design. To protect copyright and cultural ownership, the Board strongly urges all Aboriginal and Torres Strait Islander artists to develop their own designs or to use designs which relate only to their own cultural identity.

The Australia Council recognises the fundamental role of the Aboriginal and Torres Strait Islander Arts Board as the leading authority in Aboriginal and Torres Strait Islander arts, and actively promotes the unique Aboriginal and Torres Strait Islander cultures as being integral to Australia's national identity.

The Aboriginal and Torres Strait Islander Arts Board values the diversity and capacity for innovation that exists in Aboriginal and Torres Strait Islander and Australian multicultural society, and encourages its creative expression in all areas of artistic practice.¹⁷⁸

Department of Communications, Information Technology and the Arts

“The Department of Communications, Information Technology and the Arts is a dynamic, medium sized Department of around 600 people, providing policy advice and program support to the Australian Government, on arts, information technology and communications portfolio issues.

The Department is responsible for a range of activities that support, promote and encourage a vibrant and diverse arts and cultural sector. Here you will find information on culture and heritage; intellectual property; film and broadcasting; policy and legislation; grants and tax incentives; reviews; reports and discussion papers.”

About Visions of Australia

“Visions of Australia aims to make exhibitions of cultural material accessible to more Australians. It provides grants to cultural and community organisations to develop and tour exhibitions of historical and scientific material; visual arts and craft; multimedia and Aboriginal and Torres Strait Islander culture throughout Australia. Exhibitions should have a predominantly Australian source or theme.

Through the program, more Australians have the chance to enjoy our diverse culture and organisations can tour exhibitions interstate to major centres as well as regional and remote areas.¹⁷⁹”

State Arts Ministries/Departments

Arts departments and ministries in each state will usually have an Indigenous liaison officer or project officer to look after the interests of Indigenous artists in their state. Some departments have dedicated funding for Indigenous projects, and others ensure that Indigenous projects are funded through the general range of programs offered.

¹⁷⁸ From the Australia Council website www.ozco.gov.au

¹⁷⁹ From the Department of Communications, Information Technology and the Arts website www.dcita.gov.au

APPENDIX 4: Art & Craft Centres

NEW SOUTH WALES

Bindi Aboriginal Heritage and Culture Centre
36 Fairmont Drive
WAUCHOPE NSW 2446
Ph 02 6586 1173
Fx 02 6586 1133

Boomalli Aboriginal Artists Co-op Ltd
191 Parramatta Road
ANNANDALE NSW 2038
PO Box 176
WESTGATE NSW 2048
Ph 02 9560 2048
Fx 02 9560 2048
boomalli@mpx.com.au
www.culture.com.au/scan/boomalli/

Tobwabba Art
10 Breckenridge Street
FORSTER NSW 2428
Ph 02 6554 5755
Fx 02 6555 6757
tobwabba@iniaccess.net.au
www.tobwabba.com

Yurundiali Aboriginal Corporation
3 Endeavour Lane
MOREE
PO Box 686
MOREE NSW 2400
Ph/Fx 02 6752 7581

NORTHERN TERRITORY

Alekarenge Arts
Alekarenge Women's Centre
PMB Ali Curung
Via ALICE SPRINGS NT 0872
Ph 08 8964 1908
Fx 08 8964 1975

Animparrimppi Artists
PMB Mt Liebig
Via ALICE SPRINGS NT 0872
The Art Coordinator
Ph 08 8956 8588
Fx 08 8956 8989

Aputula Arts - CMB Finke
Via ALICE SPRINGS NT 0872
The Art Co-ordinator
Ph 08 8956 0976
Fx 08 8956 0900

Bima Wear Association Inc.
Nguuu
BATHURST ISLAND NT 0822
Ph 08 8978 3980
Fx 08 8978 3888

Borrooloola Art & Culture Centre
BORROLOOLA
c/- NLC
BORROLOOLA NT 0854
Ph 08 8975 8848
Fx 08 8975 8745

Buku Larrnggay Mulka Arts Centre
Yirrkala
via NHULUNBUY NT 0880
Ph 08 8987 1701
Fx 08 8987 2701
yirrkala-arts@taunet.net.au

Bulabula Arts
Ramininging
PMB 161
WINNELLIE NT 0822
Ph 08 8979 7911
Fx 08 8979 7919

Elcho Island Artists
Galiwin'ku
ELCHO ISLAND NT 0822
The Art Co-ordinators
Ph 08 8987 9252
Fx 08 8987 9074

Elliot Women's Centre
Gurungu Aboriginal Council
North Camp
ELLIOTT NT 0862
Ph 08 8969 2079
Fx 08 8969 2090

Hermannsburg Potters
PMB 4
Hermannsburg
via ALICE SPRINGS NT 0872
Ph/Fx 08 8956 7414

Ikuntji Arts Centre
PMB Haasts Bluff
Via ALICE SPRINGS NT 0872
Ph/Fx 08 8956 8783

Injalak Arts and Crafts
GUNBALANYA
PO Box 131 - Oenpelli
via DARWIN NT 0822
Ph 08 8979 0190
Fx 08 8979 0119

Ipolera
Ipolera Community
PO Box 176
Hermannsburg
via ALICE SPRINGS NT 0872
Ph 08 8956 7466
Fx 08 8956 7316

Jilamara Arts and Crafts
Milikapiti
MELVILLE ISLAND
PMB 96
WINNELLIE NT 0822
Ph/Fx 08 8978 3901

Jukurrpa Artists
18 Leichhardt Terrace
ALICE SPRINGS
PO Box 8875
ALICE SPRINGS NT 0870
Ph 08 8953 1052
Fx 08 8956 7414
jukart@ozemail.com.au
www.ozemail.com.au/~jukurrpa/

Julalikari Council Art Centre
PO Box 158
TENNANT CREEK NT 0861
Ph 08 8962 2163
Fx 08 8962 3236

Keringke Arts
PMB Santa Teresa
via ALICE SPRINGS NT 0872
Ph/Fx 08 8956 0956

Maningrida Arts & Culture
Maningrida
Via DARWIN
PMB 102
WINNELLIE NT 0822
Ph 08 8979 5946
Fx 08 8979 5996
macsaa@maningrida.bu.aust.com
www.bu.aust.com/maningrida/welcome.html

Mabunji Resource Centre Art Gallery
Borrooloola NT 0854
Ph 08 8975 8785
Fx 08 8975 87

Maruku Arts and Crafts
CMA Ininti Store
Uluru, Ayers Rock
Via ALICE SPRINGS NT 0872
Ph 08 8956 2153
Fx 08 8956 2410

Merrepen Arts-Naiyu
DALY RIVER
PMB 28
Daly River
Via WINNELLIE NT 0822
Ph 08 8978 2533
Fx 08 8978 2766

Mimi Arts and Crafts Gallery
6 Pearce Street
KATHERINE
PO Box 920
KATHERINE NT 0851
Ph/Fx 08 8971 0361

Munupi Arts
PMB 163
Pirlangimpi/Pularampi
MELVILLE ISLAND NT 0822
Ph/Fx 08 8978 3975
munupi@bigpond.com

Nambara Arts & Crafts
Melville Bay Road
PO Box 420
NHULUNBUY NT 0881
Ph 08 8987 2811
Fx 08 8987 2632

Papunya Tula Artists Pty Ltd
78 Todd Street
ALICE SPRINGS
PO Box 1620
ALICE SPRINGS NT 0871
Ph 08 8952 4731
Fx 08 8953 2509

Peppiminarti Awa Falmi Merrepen Arts Group
Peppiminarti
PMB 56
WINNELLIE NT 0821
Ph 08 8978 2583
Fx 08 8978 2370

Tiwi Design
Nguiu
BATHURST ISLAND
PMB 59
WINNELLIE NT 0822
Ph 08 8978 3982
Fx 08 8978 3828
tiwides@octa4.net.au

Tjitjikaria Women's Centre
PO Box 149
ALICE SPRINGS NT 0871
Ph 08 8956 0863
Fx 08 8956 0843

Utju Arts
PMB Areyonga
Via ALICE SPRINGS NT 0872
Ph 08 8956 7311
Fx 08 8956 7302

Utopia Awely Batik and Cultural Centre
Utopia
PMB 200 Utopia
Via ALICE SPRINGS NT 0871
The Art Co-ordinator
Ph 08 8956 9973
Fx 08 8956 9938

Wadeye Art and Cultural Centre
PO Box WADEYE
NT 0822
Ph 08 8978 1049
Fx 08 8978 1052
A/H Ph 08 8978 2951
wadeye@topend.com.au
www.topend.com.au/~wadeye

Walkatjara Art & Craft Centre
Mutitjulu Community
ULURU
CMA Ininti Store
ULURU NT 0872
Mob: 015 839 411
Fx 08 8956 2082

Wallace Rockhole Community Arts
Larapinta Drive
Via ALICE SPRINGS NT 0872
Ph 08 8956 7993
Fx 08 8956 7491

Warlukurlangu Artists
PMB 103
Yuendumu
Via ALICE SPRINGS NT 0872
Ph 08 8956 4031
Fx 08 8956 4003
warlu@ozemail.com.au

Warnayaka Art Centre
CMB Lajamanu
via KATHERINE NT 0852
Ph 08 8951 1565
Fx 08 8951 1553

Warumpi Arts
Shop 7, 105 Gregory Tce
ALICE SPRINGS NT 0871
Ph/Fx 08 8952 9066

Watiyawanu Artists of Amunturrnga
PMB Mt Liebig
via ALICE SPRINGS NT 0872
Ph 08 8956 8592
Fx 08 8956 8989

Wugularr Arts Centre
PMB 26 Barunga
Via KATHERINE NT 0852
Ph 08 8975 4514
Fx 08 8975 4565

Yurrampi Crafts
Yuendumu
Via ALICE SPRINGS NT 0872
The Art Co-ordinator
Ph 08 8956 4043
Fx 08 8956 4001

QUEENSLAND

Bama Ngappi Ngappi
26 Workshop Street
YARRABAH QLD 4871
Ph 07 4056 9145

Campfire Group Aboriginal Corporation
678 Ann Street
FORTITUDE VALLEY QLD 4006
PO Box 678
SPRING HILL QLD 4000
Ph 07 3216 1250
Fx 07 3216 1251
www.pegasus.oz.au/~firehorse/art/firework.html

Lockhart River Arts and Culture Centre
c/- Post Office
LOCKHART QLD 4871
Ph 07 4060 7341
lockartcou@bigpond.com

Muyinda Aboriginal Corporation
c/- Post Office Gununa
MORNINGTON ISLAND QLD 4871
Ph 07 4745 7246
Fx 07 4745 7188

Trading Arts & Crafts Aboriginal Corporation
PO Box 2272
MOUNT ISA QLD 4825
Ph 07 4749 0611
Fx 07 4749 0614

Wik Artists & Cultural Resource Centre
1 Taipan Street
AURUKUN QLD 4871
Ph 07 4060 6202
Fx 07 4060 6150

SOUTH AUSTRALIA

Ernabella Arts Inc.
Ernabella
Via ALICE SPRINGS NT 0872
The Art Co-ordinator
Ph 08 8956 2954
Fx 08 8956 7940

Iwantja Arts & Crafts
PMB 20
Indulkana
Via ALICE SPRINGS NT 0872
Ph/Fx 08 8670 7712

Kaltjiti Crafts
PMB Fregon
Via ALICE SPRINGS NT 0872
Ph 08 8956 7720
Fx 08 8956 7862

Marree Arabunna Peoples Committee
MARREE
PO Box 27
MARREE SA 5733
The Co-ordinator
Ph/Fx 08 8675 8351

Tjurma Homelands Minymaku Batik
c/- Tjurma Homelands
PMB Amata
Via ALICE SPRINGS NT 0872
Ph/Fx 08 8956 2899

TASMANIA

Deloraine Aboriginal Cultural Association
34 Parsonage Street
DELORAIN TAS 7304
PO Box 297
DELORAIN TAS 7304
The Administrator: Ms Darlene Mansell
Ph 03 6362 3168
Fx 03 6362 3178

Palawa Prints
1 Berriedale Road
BERRIEDALE TAS 7011
PO Box 1011
NSDC
GLENORCHY TAS 7010
Ph 03 6249 5122
Fx 03 6249 3418

Women's Karadi Aboriginal Corporation
4 Rosthay Circle
GOODWOOD TAS 7010
PO Box 523
GLENORCHY TAS 7010
Ph 03 6249 4163
Fx 03 6249 3418

VICTORIA

Dja Dja Wrung Aboriginal Association
13-15 Forest Street
BENDIGO VIC 3550
Ph 03 5441 5367
Fx 03 5441 6472
Koori Arts Collective Ltd

29-31 Victoria Street
FITZROY VIC 3065
PO Box 144
FITZROY VIC 3065
Ph: 03 9417 7044
Fx 03 9419 1404

Koorie Heritage Trust Inc.
328 Swanston Street
MELBOURNE VIC 3000
Ph 03 9669 9058
Fx 03 9669 9872
kooricht@vicnet.net.au

Shepparton Aboriginal Arts Council
Parkside Drive
SHEPPARTON
PO Box 1386
SHEPPARTON VIC 3630
Ph 03 5831 1020
Fx 03 5821 0718

WESTERN AUSTRALIA

Gumbarnum Arts & Crafts
One Arm Point
BROOME WA 6725
The Art Co-ordinator: Ms Francine Riches
Ph/Fx 08 9192 4853

Halls Creek Arts Centre
Duncan Highway
HALLS CREEK
PO Box 251
HALLS CREEK WA 6770
The Art Co-ordinator
Ph 08 9168 6460

Jarnda Yawaru Womens Centre
PO Box 854
BROOME WA 6725
Ph 08 9193 6441
Fx 08 9193 6444

Mangkaja Arts Resource Agency
Forest Road
FITZROY CROSSING
PO Box 117
FITZROY CROSSING WA 6765
Ph 08 9191 5272
Fx 08 9191 5279
Mangkaja_Arts@bigpond.com
www.users.bigpond.com/Mangkaja_Arts/
webpage
Ngunga Designs

PO Box 642
DERBY WA 6728
Ph 08 9191 1128
Fx 08 9191 1158

Warba Mirdawaji
Lot 11 Canarvon Tce
ROEBOURNE WA 6718
PO Box 240
ROEBOURNE WA 6718
Ph/Fx 08 9182 1051
Warbamirdawaji@kisser.net.au

Warburton Arts Project
PMB 71
Warburton Community
Via ALICE SPRINGS NT 0871
The Art Co-ordinator: Mr Gary Proctor
Ph 08 8956 7642
Fx 08 8956 7647

Waringarri Arts
Speargrass Road
KUNUNURRA
PO Box 968
KUNUNURRA WA 6743
Ph 08 9168 2212
Fx 08 9169 1044

Warlayirti Artists Aboriginal Corporation
PMB 20
Balgo Hills
Via HALLS CREEK WA 6770
Ph 08 9168 8960
Fx 08 9168 8889

Warba Mirdawaji Arts
ROEBOURNE
PO Box 46
ROEBOURNE WA 6718
Ph 08 9182 1051
Fx 08 9182 1375

Yarliyil Art Centre
Duncan Highway
HALLS CREEK WA 6770
PO Box 251
HALLS CREEK WA 6770
Ph 08 9168 6460
Fx 08 9168 6595

Yuriny Aboriginal Cultural Centre
PO Box 1209
DERBY WA 6728
Ph 08 9191 1712
Fx 08 9191 1715

APPENDIX 5: Examples - exhibition labels

The following examples are an indication only, of the range of information which may be provided on captions accompanying Indigenous artworks. Note that cultural information is not a necessity, and that some artists prefer their work to be accompanied by similar information as would accompany the work of non-Indigenous artists. However, it is recognised that many audiences find that extended captions increase their appreciation of the work. Label font size should be large enough for easy viewing.

Example 1

(a short label, containing brief cultural information about the artist - courtesy National Gallery of Australia)

Robert CAMPBELL Jnr

Ngaku people

Born Australia 1944

died Australia 1993

Sammie Alfie Drew, local Macleay Aboriginal sporting identity

1990 Kempsey, New South Wales

synthetic polymer paint on canvas

National Gallery of Australia 1998.145

A National Gallery of Australia Travelling Exhibition

Example 2

(an extended label, containing cultural information provided by Papunya Tula Artists - courtesy Flinders University Art Museum)

Tjunkiya Napaltjarri (Pintupi)

Umari

1998

acrylic on canvas

610 x 310 mm

Napaltjarri has depicted the travels of a group of senior women from the rockhole site of Umari, east of the Kivirrkura Community. In this work the artist has shown the edible seeds known as wangunu (woollybutt) which are ground and mixed with water to a thick paste and formed into a type of damper, which is cooked in the ashes. The women, who are represented by the 'U' shapes, later travelled east to Pinari, north-west of Kintore.

**Information kindly provided by
Papunya Tula Artists**

APPENDIX 6:

Contact details for organisations referred to in the text

Aboriginal Artists Agency Ltd
PO Box 282
CAMMERAY NSW 2062
Ph 02 9923 2355

Aboriginal and Torres Strait Islander Board of the Australia Council
372 Elizabeth St
SURRY HILLS NSW 2010
PO Box 788
STRAWBERRY HILLS NSW 2012
Ph 02 9215 9000
Fx 02 9215 9111
www.ozco.gov.au/atsia

ATSIC - Aboriginal and Torres Strait Islander Commission
PO Box 17
WODEN ACT 2606
Ph 02 6289 1222
Fx 02 6285 2692
www.atsic.gov.au

Arts & Recreation Training ACT
PO Box 720
DICKSON ACT 2602
ACT Indigenous Arts Officer
Ph 02 6247 1000
Fx 02 6247 7739

Arts Law Centre of Australia
The Gunnery
43-51 Cowper Wharf Road
WOOLLOOMOOLOO NSW 2011
Ph 02 9251 3166
Fx 08 9358 6475
Toll Free 1800 221 457
artslaw@artslaw.com.au
www.artslaw.com.au

Arts South Australia
11th Floor, 10 Pulteney Street
ADELAIDE SA 5000
GPO Box 2308
ADELAIDE SA 5000
Ph 08 8207 7100
Fx 08 8207 7159

Association of Northern, Kimberley and Arnhem Aboriginal Artists:

ANKAAA
Froghollow Arts Centre
Mc Minn Street
DARWIN
PO Box 2152
DARWIN NT 0801
Ph 08 8981 6134
Fx 08 8981 6048
ankaaa@taunet.net.au
www.taunet.net.au/ankaaa

Australian Copyright Council
3/245 Chalmers Street
REDFERN NSW 2016
Ph 02 9318 1788
Fx 02 9698 3536
cpright@copyright.org.au
www.copyright.org.au

Australian Institute for Aboriginal and Torres Strait Islander Studies: AIATSIS

Acton House, Marcus Clarke Street
ACTON
GPO BOX 553
CANBERRA ACT 2601
Ph 02 6246 1111
Fx 02 6249 7310
www.aiatsis.gov.au

Austrade
RG Casey Building
McEwen Crescent
BARTON ACT 2601
Ph 02 6201 7611
Fx 02 6201 7305

Centre for Aboriginal Economic Policy Research - CAEPR

2nd Floor, JG Crawford Building
Australian National University ACT 0200
Ph 02 6249 2858
Fx 02 6249 2798
Admin.caepr@anu.edu.au

Centre for Cross-Cultural Research

Australian National University
ACT 0200
Ph 02 6249 2434
Fx 02 6249 2438

Centre for Indigenous Natural and Cultural Resource Management (CINCRM),

Northern Territory University
www.ntu.edu.au/cincrm/projectsresearch/protocolsethics/ETHICS/ethics.html

CAL

(Copyright Agency Limited)
Level 19, 157 Liverpool Street
Sydney NSW 2000
Ph 02 9394 7600
Fx 02 9394 7601
info@copyright.com.au
www.copyright.com.au

Department of Communications, Information Technology and the Arts

GPO Box 2154
CANBERRA ACT 2601
Ph 02 6271 1000
Fx 02 6271 1901
www.dcita.gov.au

Desart

Suite 1, Heenan Building
ALICE SPRINGS
PO Box 9219
ALICE SPRINGS NT 0871
Ph 08 8953 4736
Fx 08 8953 4517

Dumbartung Aboriginal Corporation

295 Manning Road
WATERFORD WA 6102
Ph 08 9451 4977
Fx 08 9356 1823

Institute for Aboriginal Development
3 South Terrace
ALICE SPRINGS NT 0871
PO Box 2531
ALICE SPRINGS NT 0871
Ph 08 8951 1311
Fx 08 8952 2527

IP Australia
Ground floor, Discovery House
47 Bowes Street
WODEN ACT 2606
PO Box 200
WODEN ACT 2606
Ph 02 6283 2211
Fx 02 6282 5810
www.ipaustralia.gov.au

Museums and Galleries Foundation of NSW
43-51 Cowper Wharf Road
WOOLLOOMOOLOO NSW 2011
Ph 02 9358 1760
Fx 02 9358 1852

Museums Australia Inc.
National Office
PO Box 266
CIVIC SQUARE ACT 2608
Ph 02 6208 5044
Fx 02 6208 5015
programs@museumsaustralia.org.au
www.museumsaustralia.org.au

National Association for the Visual Arts: NAVA
PO Box 60
POTTS POINT NSW 1335
Ph 02 9368 1900
Fx 02 9358 6909
nava@visualarts.net.au
www.visualarts.net.au

National Cultural Heritage Committee
Department of Communications, Information Technology
and the Arts
GPO Box 2154
CANBERRA ACT 2601
Ph (02) 6271 1610
Fx (02) 6271 1079
movable.heritage@dcita.gov.au

National Indigenous Arts Advocacy Association Inc.
PO Box 235
DARLINGHURST NSW 1300
Ph: (02) 9241 3533
Fx: (02) 9241 7070
advocacy@niaaa.com.au
www.niaaa.com.au

National Indigenous Cultural Alliance NIACA
PO Box 471
DARLINGHURST NSW 2010

National Indigenous Media Association of Australia NIMAA
PO Box 109
FORTITUDE VALLEY QLD 4006
Ph: 07 3252 1588
Fx: 07 3252 7566
admin@nimaa.org.au
www.nimaa.org.au

Queensland College of Art: Bachelor of Visual Arts in
Contemporary Australian Indigenous Art
Griffith University
PO Box 84
MORNINGSIDE QLD 4170
Ph 07 3875 3190
Fx 07 3875 3199

Queensland Indigenous Artists Aboriginal Corporation
QIAAC
25-27 Cordelia Street
SOUTH BRISBANE
PO Box 3425
SOUTH BRISBANE QLD 4101
Ph 07 3846 5594
Fx 07 3217 2633

Queensland Office of Arts and Cultural Development
Level 16, 111 George Street
BRISBANE QLD 4000
GPO Box 1436
BRISBANE QLD 4001
Ph 1800 175 531 or 07 3224 4896
Fx 1800 175 532 or 07 3224 4077

Registrar of Aboriginal Corporations
PO Box 2029
WODEN ACT 2606
Ph 02 6289 8964
Fx 02 6281 2739
Toll Free 1800 622 431
Info@orac.gov.au

Screenrights
PO Box 1248
NEUTRAL BAY NSW 2089
Ph 02 9904 0133
Fx 02 9904 0498
licensing@screen.org
www.screen.org

SBS
Locked Bag 028
CROWS NEST NSW 1585
Ph 02 9430 2828
Fx 02 9430 3700

The Australian Indigenous Art Trade Association
PO Box 542
DARLINGHURST NSW 1300
Ph 02 9332 1544
Fx 02 9360 1109
arttrade@ozemail.com.au

VISCOPY
Level 1, 72 - 80 Cooper Street
SURRY HILLS NSW 2010
Ph 02 9280 2844
Fx 02 9280 2855
viscopy@viscopy.com
www.viscopy.com.au

Wildlife Permits & Enforcement
Environment Australia
PO Box 787
CANBERRA ACT 2601
Ph (02) 6274 1900
Fx (02) 6274 1921
wps@ea.gov.au

APPENDIX 7: Reference List & Bibliography

BOOKS

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13. Morphy, Howard, *Aboriginal Art*, Phaidon Press, London, 1998
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