

SUPPORTING A FAIR AND TRANSPARENT FUTURE

INDIGENOUS ART CODE LTD SUBMISSION
TO THE NATIONAL CULTURAL POLICY
JUNE 2026



Acknowledgement of Country

Indigenous Art Code acknowledges the Traditional Owners and custodians of Country throughout Australia and recognises their continuing connection to the land, waters and skies, often expressed through art. We pay our respects to artists, Elders and community members past, present and future.

Indigenous Art Code Limited (IartC) is the national organisation responsible for administering the Indigenous Art Code (the Code), a voluntary Code of Conduct promoting fair, transparent and ethical trade with Aboriginal and Torres Strait Islander visual artists. IartC works with artists and businesses across Australia and internationally to strengthen the integrity of the Indigenous visual arts market and support artists to engage in commercial opportunities from a position of self-determination.

We acknowledge the Australian Government's actions under Revive since 2023, including its response to the Productivity Commission's Aboriginal and Torres Strait Islander Visual Arts and Crafts Study Report and the reinstatement of a First Nations Board at Creative Australia. More directly, we acknowledge the review of Indigenous Art Code and subsequent funding stability for our work through operational funding under the Indigenous Visual Arts Industry Support (IVAIS) Program. The Federal Government has also demonstrated further support of the Code's principles for fair, ethical and transparent trade with Aboriginal and Torres Strait Islander visual artists through recent changes to its IVAIS grant funding guidelines. These actions have already had a significant and positive impact on our organisation, our membership, and the wider Indigenous visual arts sector.

The Indigenous visual arts market provides income and employment opportunities for thousands of Aboriginal and Torres Strait Islander artists and arts workers across the country. This market is built on Aboriginal and Torres Strait Islander cultural expression, one of the many tangible and intangible aspects of Indigenous Cultural and Intellectual Property (ICIP), and supports a broader cross-cultural ecosystem of businesses, service organisations, institutions and government that also derive employment and economic benefit from the sector.

While the Indigenous visual arts sector priorities weave across all pillars of the National Cultural Policy, *Pillar One: First Nations First* is the focus of this submission. Truly recognising the laws,

policies and perspectives that put "First Nations First" is only possible when those laws, policies and perspectives are operationalised and translated into action and tangible outcomes.

At its core, this submission is about improving transparency, reducing information asymmetry and creating conditions in which Aboriginal and Torres Strait Islander artists can participate in markets from more informed and self-determined positions.

While issues around ICIP, procurement, Resale Royalty, public collections, Artificial Intelligence (AI) and market regulation are often discussed separately, they are connected by common questions about who holds information, who influences value creation, who benefits and who is able to participate in decision-making.

Many of the recommendations in this submission are therefore less about creating entirely new systems, and more about improving how existing systems recognise, operationalise and support fair participation in practice.

Our submission presents tangible steps that the Australian Government (including through the National Cultural Policy), IartC and others across the sector can take to help transform recognition of Aboriginal and Torres Strait Islander artists into action and outcomes. We focus on practical opportunities to strengthen transparency and support a more informed and fair Indigenous visual arts market by identifying potential Government actions aligned with the issues consistently raised with us by our membership and artists more broadly. These actions aim to support systems change and contribute to a fairer, more transparent and equitable commercial art market for Aboriginal and Torres Strait Islander artists who create, sell and license their work.



Priority Action 1
Advance Indigenous Cultural and Intellectual Property (ICIP) protections, respect and recognition

- Clear and ongoing communication about the process and progress made towards the development of stand-alone ICIP legislation
- Practical capability-building for artists and their communities around ICIP issues and opportunities
- A commitment to ongoing engagement with artists, communities, senior cultural knowledge holders and the people continuing to hold and maintain cultural responsibilities in practice today, demonstrated through ongoing relationships, appropriately resourced participation, transparent decision-making and clear pathways for feedback to influence outcomes
- Promote transparency and guide institutional responsibility regarding ICIP across the market



Priority Action 2
Understand, design, improve and implement best practice processes for procurement, public institutions, schemes and programs

- Map the ways that governments at all levels intersect with and influence the Indigenous visual arts market through procurement, and how they drive the use of Aboriginal and Torres Strait Islander cultural material at scale
- Embed ICIP considerations within procurement frameworks in ways that influence purchasing decisions, supplier behaviour, contractual arrangements and accountability in practice
- Strengthen the Resale Royalty Scheme to include inspection rights
- Review the Cultural Gifts Program (CGP)



Priority Action 3
Support evidence-based, self-determined decision making for artists

- Commission an economic analysis of the commercial visual arts market for Aboriginal and Torres Strait Islander art, including how it operates within, and is affected by, the broader Australian and international visual arts markets
- Collaborate with IartC and other stakeholders to foster and facilitate transparent dialogue about benefit sharing, value, and the systems that shape the commercial art market



Priority Action 4
Create a more sustainable, future-forward funding and policy environment

- Increase and stabilise core funding, including longer-term agreements, across the Indigenous visual arts sector
- Establish a 10-year National Cultural Policy
- Support the protection of artist's Intellectual Property, Indigenous Cultural and Intellectual Property (ICIP) and commercial opportunities in the way that Government engages with global and domestic Artificial Intelligence (AI) policies and laws

IartC recognises that submissions to the National Cultural Policy process may be reviewed, summarised or analysed using Artificial Intelligence and other tools as part of managing large consultation processes.

We have attempted to structure this submission clearly and practically with that reality in mind. At the same time, we encourage readers to engage with the submission as a whole wherever possible.

Language used by Indigenous Art Code

Indigenous Art Code's preferred terminology is **Aboriginal and Torres Strait Islander** when referring to peoples, artists and art, and we use this terminology throughout our work, including this submission. We use this term in full rather than reducing it to acronym. We recognise that language preferences are not uniform and respect the terminology preferred by individuals, communities and organisations where known.

We use **Indigenous** in specific contexts only: in our organisation's name, when referencing the Code, and when discussing the art market and sector, where it aligns with established government definitions.

Who we are and what we do

Indigenous Art Code Ltd (IartC) is a not-for-profit public company limited by guarantee that administers the Indigenous Art Code (the Code).

IartC and the Code exist because artists, communities, dealers, galleries, art centres, peak bodies, governments, public institutions and collectors do not participate in the market from equal positions.

Participants operate with different levels of bargaining power, access to information, financial security, market influence and cultural responsibilities and authority. The Code was established in recognition of those imbalances and to support fairer and more transparent conditions for Aboriginal and Torres Strait Islander artists participating in the market.

IartC operates within a rigorous governance, regulatory and accountability environment. As a registered charity and public company limited by guarantee, IartC must comply with a broad range of legal, regulatory and governance obligations that shape how the organisation operates, makes decisions and exercises its functions.

This includes:

- IartC's Constitution, which is publicly available and has been developed and updated through sector consultation, expert legal advice, member engagement and board oversight. It provides the framework through which IartC operates, including governance arrangements, membership frameworks and decision-making processes
- Corporate governance obligations associated with operating as a public company limited by guarantee
- Charity governance and regulatory obligations associated with operating as a registered charity
- Tax, reporting, funding and other compliance obligations associated with operating a nationally funded not-for-profit organisation and deductible gift recipient

The purpose of the Code is to establish standards when engaging with artists for the promotion, sale, reproduction or licensing of artwork, to encourage:

- i. fair and ethical trade with Aboriginal and/or Torres Strait Islander artists and their artwork
- ii. transparency in the process of commercial dealings between Signatories and Aboriginal and/or Torres Strait Islander artists
- iii. that any breach of the Code by a Signatory is dealt with efficiently and fairly

IartC currently has 929 members across three membership categories:

- **Artist Members** made up of Aboriginal and Torres Strait Islander individual artists
- **Code Signatory Members** comprising galleries, dealers, licensing and merchandise businesses, retailers and Aboriginal and Torres Strait Islander-owned and governed art centres
- **Code Supporter Members** organisations and individuals who are not engaged in trade with artists or their artwork but support the principles of the Code

IartC and the Code are critical to a fair and ethical cultural infrastructure in the Indigenous visual arts sector. Through voluntary Code Signatory Membership, the Code sets best-practice standards for commercial trade with Aboriginal and Torres Strait Islander artists, including requirements for transparency, fair financial transactions, informed consent, and respect for Indigenous Cultural and Intellectual Property (ICIP). The Code Signatory Membership application process includes a rigorous review of the applicant's business operations to assess compliance with the Code. Where gaps are identified, IartC works collaboratively with applicants to understand Code requirements and provide opportunities for applicants to demonstrate compliance. Responsibility for meeting those requirements remains with the applicant. Code Signatory Membership is renewed annually, and members must demonstrate their continued compliance with and commitment to the principles of the Code.

Where there are concerns regarding a Code Signatory Member's compliance with the Code (which members agree to comply with at the time they become a Signatory), these concerns are generally raised directly and confidentially with the member. The objective is to ensure members understand the nature of the concern, have an opportunity to respond and, where appropriate, take steps to demonstrate continued compliance.

Where concerns cannot be resolved, or where circumstances require further action, the IartC Constitution sets out due process and procedures for the suspension or cancellation of membership.

The Code is intended to support education, transparency and behaviour change. Membership of IartC is voluntary, and maintaining confidence in what Code Signatory Membership represents requires clear standards, consistent processes and accountability for ongoing compliance.

Direct artist support is central to our work. We assist Aboriginal and Torres Strait Islander artists who contact us, regardless of their membership status, by providing tailored support and information relevant to the issues they raise, facilitating communication with businesses, and referring to specialist services where required. Artists may seek support before entering agreements, or when concerns arise regarding contracts, payments or, more commonly, unequal power dynamics within commercial relationships.

Our approach to dispute resolution centres the artist's voice and agency, with a focus on reducing harm and strengthening confidence in commercial decision-making. In our experience, artists often come away from working with IartC with a clearer understanding of their rights, who they are dealing with and the conditions attached to those arrangements.

This work can be difficult. Artists may be navigating significant power imbalances, financial pressure, geographic isolation, cultural obligations or ongoing commercial relationships that make raising concerns challenging. IartC cannot eliminate those pressures or guarantee that artists will not experience negative consequences when exercising their rights or scrutinising commercial practices. What we can do is provide information, support, advocacy and pathways that help artists make more informed decisions and navigate difficult situations with greater confidence.

IartC does not and cannot provide legal advice. Access to timely, accessible, affordable and often ongoing legal support remains an ongoing challenge across the sector, particularly where artists require advice informed by both cultural context and the practical realities of how the market operates.

Legal advice is an important component of informed decision-making. However, legal advice alone is not always sufficient to support confident market participation. Artists may also require access to independent commercial advice, practical market knowledge and broader support structures that enable informed participation in increasingly complex commercial environments.

While access to legal advice can itself be challenging, access to independent commercial advice and market expertise remains a significant gap across the sector. Commercial knowledge relating to pricing, market pathways, international opportunities, licensing, valuation, negotiation and business development is often concentrated within competitive market environments and is not always readily accessible as independent advice. This expertise frequently reflects significant investment of time, resources and experience, creating structural gaps in access to the information and support required for informed market participation.

This can create uneven access to market intelligence and commercial capability, particularly for artists working independently or outside established support structures. Greater investment in accessible commercial capability building, market literacy and independent support structures would better support artists to participate in markets from more informed and self-determined positions.

The Indigenous visual art market exists within the broader Australian commercial arts market, but also involves distinct cultural, social and community responsibilities connected to Aboriginal and Torres Strait Islander cultural knowledge, authority and expression. Like other commercial markets, it is competitive and financially driven. However, because Aboriginal and Torres Strait Islander art is inseparable from living cultures, community relationships and cultural identity, commercial activity in this space can have consequences that extend beyond ordinary market transactions.

Artists' agency and exploitation often coexist. Some artists may make informed and deliberate decisions about whether to create work, who to work with and what price to accept, while simultaneously navigating financial pressure, unequal bargaining power and other circumstances that shape those decisions.

Remote Aboriginal communities pay, on average, 40% more at the supermarket checkout than capital city shoppers, and in some communities, a basket of essential groceries costs more than twice the city price (CHOICE, October 2024). When the cost of meeting basic needs is this high relative to income, artists are routinely forced to make decisions about selling their work based on immediate financial necessity rather than fair value and terms of sale, sometimes accepting whatever price is offered rather than holding work for the return it deserves. Some commercial models derive value from these conditions persisting, particularly where profitability relies on artists having limited bargaining power or immediate financial need.

IartC regularly works with artists experiencing serious power imbalances, pressure and coercive control in commercial dealings, further magnified as a result of their lack of transparent information, and limited visibility into how their artwork circulates through the market. Artists contact IartC regardless of whether the individual, gallery, dealer, or business they are working with is a member of IartC. While the Code and Constitution apply directly only to Code Signatory members, IartC still seeks to support artists by providing information, facilitating communication where appropriate, and referring artists to specialist legal, financial, advocacy, and social support services where required.

Working with such a broad range of artists, organisations, governments and businesses in the Indigenous visual arts places us in a unique position within a complex sector.

IartC is responsive to the challenges raised by its members, developing strategic projects, outreach and resources to address these wherever possible. Many of the matters that find their way to IartC are connected to broader disputes, frustrations, accountability pressures or complex market dynamics that sit outside our role or responsibilities. As a small, visible and accessible organisation operating within a commercially sensitive environment, IartC can sometimes become a more accessible avenue for navigating difficult issues than the individuals, businesses or systems more directly connected to the underlying matters. In practice, this can result in IartC becoming a focal point for expectations, scrutiny and pressure that extend beyond our role. This reflects both the trust placed in IartC and the broader gaps that continue to exist across support, accountability, and market infrastructure.

We continue to provide expert policy advice and submissions to government inquiries, strengthening recognition of IartC and the Code as an effective mechanism within the Indigenous visual arts market.

IartC recognises that many organisations, artists, communities, peak bodies, institutions and collaborators across the sector will also contribute valuable perspectives through submissions to the National Consultation Processes. While many issues affecting Aboriginal and Torres Strait Islander artists intersect across culture, health, education, language, community wellbeing and broader social policy, this submission has intentionally focused on areas where IartC has direct experience and practical insight through its role administering the Code and supporting artists and businesses participating in the commercial Indigenous visual arts market.

It is informed by our understanding of:

- Direct dialogue with Aboriginal and Torres Strait Islander artists representing diverse language groups, forms of cultural expression and lived experience
- The ongoing need for transparency in the creation, promotion, use and sale of Aboriginal and Torres Strait Islander art and the way in which this need materialises for artists, their representatives, and consumers
- The points of sale for Aboriginal and Torres Strait Islander art are highly varied and operate through diverse business models and governance structures including galleries, retailers, Aboriginal and Torres Strait Islander-owned and controlled arts centres, licensing and merchandise businesses, secondary market and direct sales from artists
- Recognising the complexity of operating businesses within the Indigenous visual arts sector, while acknowledging that artists, businesses and communities all benefit when fair, transparent and ethical business practices support sustainable commercial outcomes
- The opportunities for productive dialogue and data sharing within the Indigenous visual arts sector so that policy and decisions are evidence based, and grounded in a deep understanding of benefit sharing, Aboriginal and Torres Strait Islander artwork sale and licensing pathways, and how value circulates through the Indigenous art market
- The opportunities and potential within the Aboriginal and Torres Strait Islander art market, both domestically and internationally, recognising that access to those opportunities is not evenly distributed

PRIORITY ACTION 1

ADVANCE INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY (ICIP) PROTECTIONS, RESPECT AND RECOGNITION



There would be no Aboriginal and Torres Strait Islander art market without Aboriginal and Torres Strait Islander cultural expressions and traditional knowledge.

The challenge is increasingly not whether this ICIP should be recognised and protected, but how that recognition is operationalised transparently, fairly and practically across the systems, institutions and markets already shaping outcomes. IartC strongly supports the development of the standalone ICIP legislation committed to under Revive, and recognises the complexity and time involved in developing a legal framework which responds to the diversity of Aboriginal and Torres Strait Islander cultural governance systems, communities and lived realities. Any future framework will need to be properly resourced and embedded across government, institutions and industry, not treated as a symbolic or purely legal reform.

The ongoing lack of comprehensive protections for ICIP, alongside challenges in operationalising ethical and fair dealing consistently across some parts of the market and institutions, continues to create significant gaps in how Aboriginal and Torres Strait Islander art, cultural knowledge and cultural expression are recognised, respected and protected.

There is an opportunity to implement stronger protections, enhance understanding of existing systems and safeguards, and better recognise that those who benefit from Aboriginal and Torres Strait Islander art, cultural expression and cultural knowledge also have a role in ensuring the systems around them are fair, respectful and fit for purpose.

IartC supports meaningful and direct engagement with Aboriginal and Torres Strait Islander artists in the development of future ICIP protections and encourages a broad and inclusive approach to reform.

A framework developed primarily through a visual arts lens, or one limited to cultural expressions embodied only within visual arts practice, is unlikely to adequately reflect the broader realities of Aboriginal and Torres Strait Islander cultural knowledge systems, governance structures, cultural authority and lived experience, where cultural expression occurs in diverse and interconnected ways.

We understand from the Office for the Arts website that expert working groups have been established and consultation activities have occurred over several years. Greater visibility into progress towards standalone ICIP protections would assist IartC, its members, and the broader sector in better understanding, preparing for, and engaging with future reforms.

Greater clarity regarding progress and implementation pathways would also assist organisations, businesses, institutions and communities already attempting to recognise, respect and operationalise ICIP in practice. Many parts of the sector are already making decisions about procurement, licensing, governance, collections, partnerships and commercial practices. Clearer visibility of the reform process would support alignment across the sector, enable more informed decision-making and assist with practical implementation as protections are developed and introduced.

In particular, additional information regarding the following would be valuable:

1. Greater clarity regarding the development and scope of proposed protections, including:
 - a. whether the scope of protections has been further developed
 - b. who may benefit from those protections and how entitlement may be established
 - c. proposed pathways for resolving disputes or enforcing rights, particularly noting the cost, time and accessibility challenges associated with existing legal processes
 - d. whether exposure drafts, legislative drafting or other implementation work has commenced
2. Greater visibility of learnings arising from consultation processes, including publication of findings, themes or consultation outcomes that may assist the sector to understand how feedback has informed policy development.
3. Greater clarity regarding implementation pathways, including indicative timelines for further consultation, legislative development and operationalisation of future protections.

Many practical questions regarding the operationalisation of ICIP protections remain unresolved and are already emerging across the sector. This includes questions relating to naming practices, use of Indigenous languages and cultural terminology, permissions, authority and attribution. These issues are often complex and context specific, reinforcing the need for practical guidance alongside legislative reform.

Standalone ICIP legislation is an important step, and expectations regarding what future protections will achieve should remain realistic. Future protections are unlikely to prevent all forms of unauthorised reproduction, offshore manufacturing, AI training, copying, or broader misuse simply by their existence. Given the significant time, consultation, and public investment already committed to the development of standalone protections, greater clarity regarding both the intended scope and limitations of reform would assist artists, communities, businesses and institutions. Progressing the development and implementation of ICIP protections are a crucial step in giving effect to the United Nations Declaration on the Rights of Indigenous People, article 31 which reads:

Article 31

1. *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.*
2. *In conjunction with Indigenous peoples, States shall take effective measures to recognise and protect the exercise of these rights.*

IartC is not a cultural authority. Our role is to support understanding, transparency and practical engagement with these issues, rather than determine cultural legitimacy or authority.

We acknowledge that existing bodies and decision-making frameworks within communities are the right places to discuss and address these issues.

There remains an important role for practical capacity-building, guidance, transparency and institutional responsibility across the market. IartC is aware that long-term progress in this area will require more than legislation alone. It will require ongoing engagement with artists, communities, senior cultural knowledge holders and the people continuing to hold and maintain cultural responsibilities in practice today.

There is also a significant need for practical guidance and support across the sector — including for Aboriginal and Torres Strait Islander owned businesses, art centres, galleries, institutions and licensing entities — around how ICIP responsibilities can be understood and operationalised in day-to-day commercial practice. At present, our understanding from members is that there is limited capacity and infrastructure available to support this work consistently across the market.

Fake art still harms culture

Many Aboriginal and Torres Strait Islander artists, organisations and community members have contributed to advocacy on this issue offering significant time, cultural knowledge and lived experience through submissions, consultations and parliamentary inquiry processes following the Fake Art Harms Culture campaign and related ICIP discussions.

The Fake Art Harms Culture campaign elevated national awareness of inauthentic Indigenous-style products and their cultural and economic harm. IartC's joint leadership of the campaign, with Copyright Agency and Arts Law Centre of Australia, translated long-standing grassroots concerns into coordinated policy, media and consumer action. IartC's contribution was to accelerate momentum and provide accessible pathways for artist participation in the reform process. The Federal Government's 2023 Revive commitment to introduce stand-alone ICIP legislation reflects decades of advocacy by Aboriginal and Torres Strait Islander artists and organisations. The challenge now is turning that commitment into current, practical and workable systems, protections and support across the sector.

Respecting the ICIP of other artists and communities

IartC is increasingly being approached by artists to assist in matters relating to ICIP, including where an artist believes that their and their community's ICIP has been copied, misused or breached by another artist. This is complex ground, and in responding to the concerns being raised, our role is to

facilitate discussion between artists in the context of IartC Artist Membership, rather than to be a decision-making body about cultural knowledge disputes.

In 2024, we held a workshop with artists and leaders representing diverse Aboriginal and Torres Strait Islander cultures and lived experiences. Under this guidance, IartC developed an ICIP Declaration that existing Artist Members and new applicants make as a part of their application and renewal for IartC Artist Membership. The consultation process also determined a need for further education, and as such, IartC has developed an Artists' Perspectives on Intellectual Property (ICIP) suite of educational resources and associated artist outreach. These resources aim to provide practical, culturally grounded guidance on navigating cultural responsibilities, consent and accountability at the individual and community level. This initiative reflects IartC's responsive model of translating member concerns into sector-wide tools and education.

With funding from Creative Australia, we have been developing a series of short films in which artists speak directly to other artists and reflect on themes such as cultural authority, permissions, authorship, cultural responsibility, and the practical realities of protecting and respecting cultural material. These films do not attempt to provide a single position on ICIP— their value lies in demonstrating the diversity and lived reality of these issues across communities and cultural contexts. It has also highlighted that the terms 'Indigenous Cultural and Intellectual Property' and 'ICIP' are not widely understood by that language, which risks artists not knowing how to engage in dialogue around the development of laws that will affect their ongoing cultural obligations, practices, and expressions through visual art and across art forms.

The videos can be viewed on the IartC website.

“Using our way, our style of Arnhem Land with the cross-hatching is not allowed. You can't do the painting without a ceremony, without a Songline”.

Peter Gämbung, Gupapuyŋu Artist, Bula'bula Arts, 2026

Respecting ICIP is not the responsibility of artists and communities alone. Everyone who participates in the Indigenous visual arts market interacts with ICIP.

The businesses that sell, license and reproduce work, the institutions that collect, exhibit and interpret it, and the governments that purchase, fund and regulate across the sector— each make decisions every day that determine whether cultural material is used with consent, attribution and benefit flowing back to artists and communities, or in ways that erode them.

Meaningful progress, therefore, depends on shared accountability across the whole market, rather than artists carrying the burden of protection while others draw value from their cultural material. The National Cultural Policy can support this by promoting transparency and guiding institutional responsibility regarding ICIP across the market, so the obligation to respect cultural material rests with everyone who benefits from it.

Shared accountability may also require reflection across the broader market, including by individuals, organisations and businesses whose practices, products or commercial activities intersect with cultural material in ways that are not always well understood. For some, this may require reconsidering practices that have historically been accepted or commercially beneficial. Building a stronger market requires willingness across the sector to adapt practice where appropriate, including where doing so may involve difficult conversations or commercial trade-offs.



Priority Action 1 Advance Indigenous Cultural and Intellectual Property (ICIP) protections, respect and recognition

- Clear and ongoing communication about the process and progress made towards the development of ICIP laws
- Practical capability-building for artists and their communities around ICIP issues and opportunities
- A commitment to ongoing engagement with artists, communities, senior cultural knowledge holders and the people continuing to hold and maintain cultural responsibilities in practice today
- Promote transparency and guide institutional responsibility regarding ICIP across the market

PRIORITY ACTION 2

UNDERSTAND, DESIGN, IMPROVE AND IMPLEMENT BEST PRACTICE PROCESSES FOR PROCUREMENT, PUBLIC INSTITUTIONS, SCHEMES AND PROGRAMS



Aboriginal and Torres Strait Islander visual art procurement by government influences markets, shapes incentives and establishes expectations regarding best practice for the commissioning, acquisition, licensing, exhibition, digitisation and archiving of artwork. Procurement decisions also influence which businesses, practices and behaviours are rewarded at scale.

While Indigenous Cultural and Intellectual Property (ICIP) is increasingly recognised through cultural policy and legislative development, these principles are not yet consistently operationalised within the procurement frameworks, schemes and institutional processes shaping how Aboriginal and Torres Strait Islander cultural material is purchased, commissioned, licensed and used.

Government has an opportunity to use procurement frameworks more intentionally as mechanisms for market leadership and behaviour change. Small policy shifts in these areas could significantly influence behaviour across large parts of the market.

IartC recommends that government procurement frameworks:

- Preference transparent and ethical suppliers
- Support fair and informed licensing practices
- Incorporate practical ICIP considerations
- Encourage transparency around supply pathways
- Avoid inadvertently rewarding opaque conduct

First Nations First priorities require more than good intentions. They require procurement systems capable of asking better questions.

As governments continue to develop and implement First Nations First priorities, procurement processes should recognise that Aboriginal and Torres Strait Islander ownership, governance and participation are important considerations and should continue to be supported and strengthened. At the same time, ownership alone may not answer all questions relating to cultural authority, capability, ethical conduct or suitability for particular projects and activities.

Supporting Aboriginal and Torres Strait Islander-owned businesses and strengthening accountability, transparency and informed decision-making should be viewed as complementary objectives rather than competing priorities. Aboriginal and Torres Strait Islander ownership and adherence to the standards expected of Code Signatory Membership are related but distinct considerations. Procurement processes should recognise both.

Federal and State governments should lead by example by ensuring procurement processes appropriately consider:

- Artist engagement
- Contracts, consent and commercial arrangements
- Licensing and ICIP permissions
- Supply pathways
- Business practices and transparency

Strengthening the Resale Royalty Scheme to include inspection rights

IartC supports consideration of strengthened compliance and inspection rights within the Resale Royalty Scheme, alongside appropriate resourcing of the scheme's administration.

The Resale Royalty Scheme remains one of the few structural mechanisms that returns ongoing economic value to artists beyond the initial point of sale. Given the significant proportion of royalty payments made to Aboriginal and Torres Strait

Islander artists, improving transparency and confidence in compliance within the scheme has the potential to deliver meaningful long-term benefits.

IartC has previously supported proposals advanced by Copyright Agency regarding inspection rights and improved access to relevant resale records. These reforms would not resolve all issues relating to unfair market conduct or unequal bargaining power. However, they would strengthen transparency and improve confidence that existing legal obligations are being understood and met.

IartC's concern extends beyond awareness of the scheme itself to how Resale Royalty obligations operate in practice within complex commercial relationships and supply pathways.

In some circumstances, artists may have limited visibility regarding whether transactions constitute a first purchase, an advance payment arrangement or a resale event for the purposes of the scheme.

These challenges can become more complex where ongoing commercial relationships, credit arrangements, book-up practices or other forms of financial dependency influence how transactions are structured, described or understood. In practice, information asymmetry often means sellers, rather than artists, hold greater visibility regarding supply pathways, transaction history and when resale obligations may arise.

Through IartC's Code Signatory application and renewal processes, it is clear that familiarity with the scheme varies across different parts of the market. This is not surprising given the diversity of business models, sales pathways and participants involved in the sector, but suggests there may be opportunities to strengthen education, transparency and confidence that reporting obligations are operating as intended including international reciprocal obligations.

Greater transparency and visibility across secondary market pathways would not eliminate these challenges, but may improve confidence that artists are receiving the benefits the scheme intends to provide.

Review the Cultural Gifts Program

IartC recognises the important role the Cultural Gifts Program (CGP) plays in supporting public collections, philanthropy and the long-term preservation and accessibility of Aboriginal and Torres Strait Islander art. The program provides significant cultural and public benefit and remains an important mechanism within the broader arts ecosystem.

At the same time, programs such as the CGP do not operate separately from the market. Decisions relating to acquisition, valuation, donation and collection building can influence market perceptions, artist careers and how value circulates through the sector.

Many institutions participating in the program are balancing multiple objectives and responsibilities, including collection development, donor relationships, philanthropy, public access and cultural stewardship. These are not straightforward decisions. However, because public collections and donation programs can influence markets, greater transparency regarding acquisition pathways, valuation processes and how works enter collections may assist artists, institutions and the broader sector to better understand these impacts.

Concerns regarding transparency are not limited to questions of provenance or misconduct. They also relate to recognising that when works enter significant collections, market effects may follow. Increased transparency regarding how works are acquired, valued and donated may help artists and the sector better understand these relationships.

Valuation processes present similar complexities. Specialist knowledge and market expertise are important components of valuation processes. At the same time, expertise, market participation and value creation are often closely connected within art markets. Greater transparency regarding valuation processes may therefore strengthen confidence in the operation of the scheme while recognising the practical realities of how art markets function.

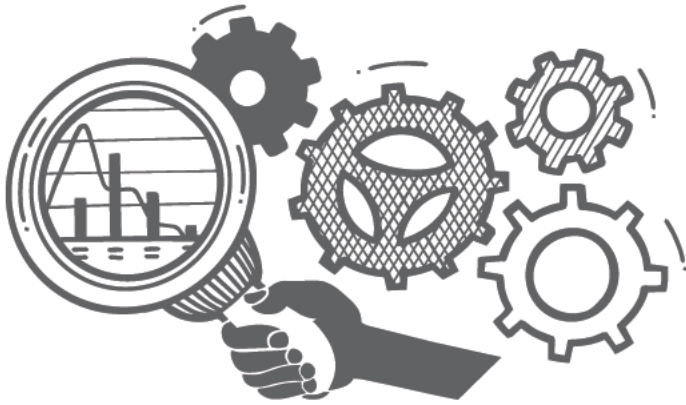
There may be opportunities to consider whether broader forms of market, cultural and artist knowledge could contribute to valuation processes, while recognising the practical challenges associated with expertise, independence, consistency and implementation.

Priority Action 2 Understand, design, improve and implement best practice processes for procurement, public institutions, schemes and programs

- Map the ways that governments at all levels intersect with and influence the Indigenous visual arts market through procurement, and how they drive the use of Aboriginal and Torres Strait Islander cultural material at scale
- Embed ICIP considerations within procurement frameworks in ways that influence purchasing decisions, supplier behaviour, contractual arrangements and accountability in practice
- Strengthen the Resale Royalty Scheme to include inspection rights
- Review the Cultural Gifts Program (CGP)

PRIORITY ACTION 3

ENABLE EVIDENCE-BASED, SELF-DETERMINED DECISION MAKING FOR ARTISTS



There remains a significant lack of transparent, comprehensive and accessible data and information about how value is created, shared and circulated within the Indigenous visual arts sector. This limits the ability of artists, businesses, communities, institutions and governments to make informed decisions and contributes to ongoing information asymmetries across the market.

There is an opportunity for government to work collaboratively with IartC and other stakeholders to strengthen data collection, market transparency and evidence generation so that policy development, investment decisions and market participation are informed by stronger evidence and lived experience.

IartC proposes that the National Cultural Policy could substantially contribute to this goal by expanding and reinforcing commitments to:

- enhancing transparency within the Indigenous visual arts sector
- supporting collaborative approaches to data collection, analysis and market research that draw meaningfully on existing sector expertise and lived experience
- facilitating open, transparent and productive dialogue regarding market dynamics, benefit sharing, value creation, supply pathways and points of systemic influence, including through appropriately designed independent economic analysis of the Indigenous visual arts market

Evidence-based decision making requires more than independent analysis. Evidence generation should be transparent, collaborative and useful to the artists, communities and organisations contributing to it, rather than only extracting knowledge from them.

This includes recognising data sovereignty, improving transparency around how information is collected and used, and ensuring the benefits of evidence generation flow back to the people contributing to it.

Enhanced transparency is one of the most practical and achievable ways to improve fairness, trust and informed participation across the market. The Aboriginal and Torres Strait Islander visual arts sector is both a cultural space and a commercial marketplace, in which money, competition, reputation and market power co-exist. Our ongoing contact with artists, businesses, art centres and organisations supports the view that many operate ethically, transparently and respectfully. However, there is a broader lack of sector understanding and inquiry, or open, transparent productive dialogue about:

- how market pathways operate
- where value and financial benefit sit
- how artists are engaged
- how licensing arrangements work
- how procurement decisions are made
- how commercial incentives shape behaviour

The lack of real data and transparency around these issues in turn leads to greater distrust, disconnection and isolation within the market, which in turn feeds the lack of disclosure, dialogue and connection around these issues. For example, greater transparency supports artists, consumers, institutions and government to achieve:

- informed participation – because artists and dealers understand how value moves through the market
- stronger consumer confidence – because the market understands where artworks and products come from and how artists are engaged
- fairer procurement – because the way in which cultural authority has been considered is clear
- more accountable institutional practice – because institutions understand what permissions are in place for the use of the work (and any Indigenous Cultural Intellectual Property in the work)
- better understanding and more active dialogue across the sector more broadly

The Productivity Commission has already identified many of the reasons this data is difficult to capture, including opaque commercial systems and overlapping market pathways. However, the lack of perfect data should not prevent practical improvements. Instead, government should:

- acknowledge the limitations transparently
- continue improving transparency mechanisms
- support practical information gathering
- understand the complexity (and avoid oversimplifying) the market

It is also our experience that the existing frameworks for Resale Royalty, cultural gifts and procurement are seldom well understood or leveraged to potential within the market, which leads in some instances to:

- inconsistent application of systems available to support artists and their income streams, for example where Resale Royalty entitlements are not investigated
- imbalance in the benefits flowing to the artist, for example where the value of artworks donated under the Cultural Gifts Program is not known, calculated or considered for the purposes of lost Resale Royalty revenue

The work of Aboriginal and Torres Strait Islander artists reaches the consumer market in various ways, and IartC does not support one model over another.

Simplified narratives suggesting there is only one way to buy art ethically can create polarisation within the sector and overlook the diversity of legitimate business models, artist preferences and market pathways that exist within the Indigenous art market. There is an opportunity for broader industry discussion and greater awareness of this complexity.

Too frequently, discussions about how to buy fairly and ethically are reduced to the generalisation that the only way to do so is to buy directly from one of the over 100 Aboriginal and Torres Strait Islander-owned and governed art centres. This disenfranchises artists who do not have an art centre to work with, artists who are working with dealers and galleries of their own choosing, or artists deciding to work independently, negotiating the market on their terms. It is also damaging to the dealers operating in the Indigenous art market who do work fairly and transparently with artists, many of whom have longstanding relationships with both art centres and artists working independently.

Art Centres are fundamental to a vibrant, sustainable and fair market for Aboriginal and Torres Strait Islander art. It could be argued that if artists working independently of art centres had access to even some of the support and advocacy art centres provide their member artists, the market would be fairer.

Building capacity to access and understand international art markets

Self-determined participation in international markets requires more than artistic capability alone. Access to information, networks, relationships, commercial knowledge and financial resources all influence who is able to participate and who ultimately benefits from international opportunities.

There remains limited shared understanding across the sector regarding the practical challenges, risks and opportunities associated with accessing and sustaining international markets in ways that deliver genuine long-term value to artists and communities.

Success in these markets is often driven by skilled and well-resourced entrepreneurs, galleries and businesses that have invested significant time, capital, relationships and expertise into developing these opportunities. While this is an understandable feature of competitive commercial markets, it can also contribute to uneven access to market knowledge, networks and opportunity.

International success also requires navigating commercial systems, legal frameworks, logistics, relationships, and market dynamics that may differ significantly from those in domestic markets, including pricing that reflects international market perceptions and collector expectations. Access to international opportunities does not necessarily translate into long-term commercial benefit for artists without sufficient information, support and market understanding.

Aboriginal and Torres Strait Islander artists, and their representatives, face significant barriers to participating in international markets, including:

- access barriers, including the fact that many international art fairs and commercial opportunities are generally accessed through galleries or other intermediaries
- limited access to information regarding international market pathways, commercial models, support mechanisms and opportunities
- financial barriers associated with exhibiting, promoting and transporting work internationally, which can be prohibitively expensive for many artists, galleries and art centres
- geographical barriers, where Australia's distance from many major international market hubs increases cost, time, complexity and risk associated with participation

Access alone should not be confused with impact. Improving access to international markets is not simply a question of funding attendance at overseas events or increasing participation for participation's sake. Greater consideration should be given to how international market support programs create long-term capability, stronger market pathways, knowledge transfer and meaningful benefit sharing for artists and communities.

International market participation can be expensive, relationship-driven and high risk. Investments that build capability, strengthen networks, improve market intelligence and create lasting pathways for artists may deliver greater long-term benefit than approaches focused solely on participation, exposure or short-term opportunities.

There is an opportunity to better understand what forms of support lead to sustainable market participation, stronger commercial outcomes and greater benefit flowing back to artists and communities over time.

Aboriginal and Torres Strait Islander art and cultural expression are regularly used as part of Australia's international identity and engagement activities. Greater consideration should therefore be given to how international market and cultural diplomacy initiatives create sustainable pathways for artists and communities, rather than assuming international visibility alone will deliver meaningful benefit.



Priority Action 3 **Enable evidence-based, self-determined decision making for artists**

- Commission an economic analysis of the commercial visual arts market for Aboriginal and Torres Strait Islander art, including how it operates within, and is affected by, the broader Australian and international visual arts markets
- Collaborate with IartC and other stakeholders to foster and facilitate transparent dialogue about benefit sharing, value, and the systems that shape the commercial art market

PRIORITY ACTION 4

CREATE A MORE SUSTAINABLE, FUTURE-FORWARD FUNDING AND POLICY ENVIRONMENT



More sustainable organisational funding

Arts organisations, including peak bodies, arts centres and IartC rely on government funding sources to survive. That funding needs to be adequate to the needs and contributions of the organisation, but also reliable and stable.

Organisations that receive sufficient, reliable funding are better equipped to plan for the future, manage risk, staff adequately and safely, and more generously and productively support artists and the arts sector in accordance with their strategic goals.

In particular, IartC supports the recommendation of the Aboriginal and Torres Strait Islander Art and Culture Centre Alliance submission to *restore core funding to at least the real 2016 per art centre level, as an immediate stabilisation measure*. Many Aboriginal and Torres Strait Islander artists, businesses and organisations operate in regional, remote and very remote contexts. Here higher costs associated with travel, freight, housing, workforce recruitment and retention, digital connectivity, servicing geographically dispersed communities and maintaining relationships across significant distances are often compounded by small organisational scale, workforce shortages and reliance on limited local infrastructure.

Longer-term and cross-government policy and funding cycles

IartC supports Recommendation 1 of A New Approaches NCP submission that *The Australian Government should develop the next NCP in partnership with state and territory governments and ALGA as a 10-year framework for strategic collaboration and adaptable decision-making with immediate actions to be delivered over a three-year period*.

Coupled with the more sustainable funding of arts organisations, a more integrated, long term strategy would support organisations in the sector to develop longer term goals and more efficiently achieve outcomes over a longer period.

Managing the IP and ICIP risks and economic impacts of AI

AI is not a future risk for Aboriginal and Torres Strait Islander artists, it is a present one. Cultural material is already being scraped, reproduced and used to generate outputs that misrepresent, flatten or commercialise Aboriginal and Torres Strait Islander cultural expressions without consent, attribution or benefit to artists or communities. The Government's position on AI policy will determine whether the ICIP protections it has committed to are meaningful in practice, or arrive too late to matter.

It is crucial to a fair future for all artists, but in particular Aboriginal and Torres Strait Islander artists that copyright protections must not be eroded or weakened to facilitate AI's use of, and often misplaced reference to, ICIP. To do so would disproportionately harm Aboriginal and Torres Strait Islander artists, who already face barriers in asserting their rights.

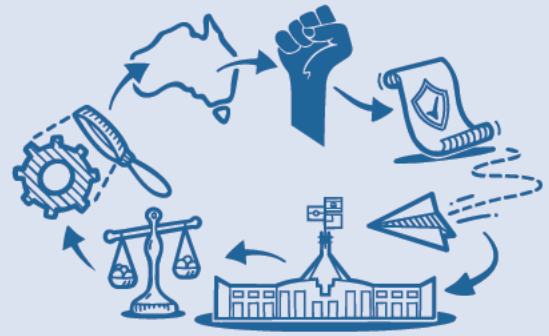
IartC has observed examples where the public promotion of ICIP principles, ethical trade and cultural respect has not always aligned neatly with implementation in practice. These tensions are not limited to any single part of the market and can emerge across artists, Aboriginal and Torres Strait Islander businesses, non-Indigenous businesses, consultants, organisations and advocacy initiatives. Materials intended to educate or advocate around these issues have, at times, incorporated AI-generated visual content or imagery that raises legitimate questions around consent, attribution, cultural authority, the use of Indigenous cultural material, including limited transparency around provenance, permissions or rights.

While the Australian Government has committed to standalone ICIP legislation, no draft has been released, leaving a critical gap in protections. This lack of protection is compounded by the risks now posed by AI's use of themes, information, ideas, knowledge and culture without consent or attribution of the communities to which it belongs.

AI scraping poses specific risks, including but not limited to:

- loss of control over ICIP
- misrepresentation of traditional cultural expressions and traditional knowledge
- derogatory treatment of intellectual property and ICIP
- market distortion through AI-generated "Aboriginal-style" outputs

In addition, AI already reproduces racial bias and derogatory stereotypes. UN Special Rapporteurs, the UN Permanent Forum on Indigenous Issues, and UNESCO have all raised concerns that AI exacerbates discrimination and undermines Indigenous Rights.



Priority Action 4
Create a more sustainable, future-forward funding and policy environment

- Increase and stabilise core funding, including longer-term agreements, across the Indigenous visual arts sector
- Establish a 10-year National Cultural Policy
- Support the protection of artist's Intellectual Property, Indigenous Cultural and Intellectual Property (ICIP) and commercial opportunities in the way that Government engages with global and domestic Artificial Intelligence (AI) policies and laws

Indigenous Art Code Ltd invites further discussion of the above priority actions, and look forward to the release and implementation of the next National Cultural Policy.

June 2026

Indigenous Art Code Ltd

