

FORM.

building a state of creativity

Response on behalf of FORM building a
state of creativity to Growing the
Indigenous Visual Arts Industry
consultation paper.

Contact:

08 9226 2799

mail@form.net.au

PO Box 443, Claremont WA 6910

Visual Arts and Design Section
Office for the Arts
Department of Infrastructure, Regional Development, Transport and Communications
GPO Box 2154
Canberra ACT 2601

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To Whom It May Concern,

Re: Response on behalf of FORM building a state of creativity to Growing the Indigenous Visual Arts Industry consultation paper.

This submission is presented on behalf of FORM building a state of creativity Inc, a not-for-profit and charitable arts and cultural organisation committed to supporting and facilitating creativity in Western Australia.

FORM is recognised as 'best practice' in its management, commissioning and promotion of Aboriginal arts through notable national projects including *Yiwarra Kuju – The Canning Stock Route Project* and the upcoming *Pilbara Survey* (working title), a region-wide, multi-artform project focusing on the Aboriginal artists and art movement of Western Australia's remote Pilbara region. The project was initiated in 2019 by FORM in collaboration with Martumili Artists (Newman), Spinifex Hill Studio (South Hedland), Yinjaa-Barni Art (Roebourne), Juluwarlu Art Group (Roebourne), Cheeditha Art Group (Roebourne/Cheeditha) and independent artists Katie West (Yindjibarndi), and Curtis Taylor (Martu). FORM has been working closely with these collaborators to deliver bush trips on Country, artist mentoring, artwork skills development, professional development, artist commissions, artist residencies, interviews and research, all of which will culminate in a series of exhibitions for regional, state, and national touring.

FORM manages The Goods Shed, a commercial art gallery in Claremont, Western Australia, and regularly partners with Aboriginal art centres to produce innovative exhibitions including *What Now?* (2020), *Bugai* (2019), *Pujiman* (2018), *Earth Matters* (2017) and *Painting Power* (2017). The Goods Shed is a member of the Indigenous Art Code and follows best practice guidelines in the ethical trade and promotion of Indigenous art.

FORM manages Spinifex Hill Studio, an art centre for South Hedland's Aboriginal artists. Spinifex Hill Studio supports over 100 emerging, mid-career and established artists from many different language groups including Kariyarra, Banyjima, Mangala, Manyjiljarra, Martu, Noongar, Nyangumarta, Nyamal, Nyiyarparli, Walmajarri, Warnman, Yamatji and Yindjibarndi. With support from FORM, this collective has grown from a small art group to a thriving artmaking hub. Spinifex Hill Studio artists are known for their vibrant and joyful paintings that reflect the unique and diverse perspectives of artists at the South Hedland studio. In recent years, Spinifex Hill Studio artists have found national acclaim in major art awards and high-profile solo and group exhibitions.

FORM recognises the essential work that art centres do to support, sustain and strengthen Aboriginal artists and communities and the positive economic and social impacts they produce. The importance of art centres should not be understated and FORM will continue to support and campaign for their continued growth and for the sustained growth of the Aboriginal and Torres Strait Islander art sector as a whole.

FORM acknowledges the important work the Indigenous Visual Arts Industry Support program does in supporting art centre operations, Indigenous employment, industry service organisations, and art fairs and events around Australia, and we welcome the opportunity to contribute to this consultation paper.

This consultation paper submitted to the Department of Infrastructure, Regional Development, Transport and Communications on Growing the Indigenous Visual Arts Industry, addresses the following key topics:

1. Sustainable growth for the Indigenous visual arts industry
2. Developing skills in the Indigenous visual arts industry
3. Strengthening digital capabilities
4. Inauthentic art and legal protections
5. Productivity Commission Study

1. SUSTAINABLE GROWTH FOR THE INDIGENOUS VISUAL ARTS INDUSTRY

FORM supports measures that strengthen and grow art centres and the art market. Art centres and the art market are intrinsically linked and to support either you must invest in the development of both. We see the Indigenous art market as accessible to artists and buyers and, despite disruptions brought by COVID-19, FORM's experience has been that it has remained stable.

Through management of The Goods Shed and Spinifex Hill Studio and collaborations with other art centres, FORM has noted an increase in people interested in purchasing Aboriginal art and supporting Aboriginal-led businesses in recent years. It is essential to capitalise on this and ensure there are safe and well-functioning options for buyers to make purchases in gallery, retail, marketplace, and online contexts. Spinifex Hill Studio has experienced an increase in its sales in the last 12 months due to participation in online art marketplaces (Darwin Aboriginal Art Fair and Tarnanthi), strong online sales through its own well-functioning e-commerce website, and through exhibition collaborations with partners who fall outside the traditional gallery model.

FORM recognises the value in greater networking and sales opportunities as a way of increasing income and exposure, and in turn art centre growth. FORM would like to see more curators and gallerists travel to remote art centres to meet with artists and staff. Spinifex Hill Studio has experienced the benefits of connecting with curators and gallerists firsthand and knows how important these relationships are in creating and supporting positive collaborations and opportunities into the future. Likewise, FORM supports an increase in art marketplace opportunities in regions where they are not currently operating (e.g. Victoria, south-western Western Australia). An increase in art marketplaces and financial support to attend would enable Spinifex Hill Studio and other art centres to engage with new audiences and generate

more sales. Ideally, these art marketplaces would dovetail with greater staff and artworker professional development opportunities, allowing for increased training and networking opportunities.

FORM has also seen an increase in interest from international buyers and supports this interest being nurtured so that it can develop into a sustainable income stream into the future. While Spinifex Hill Studio already has relationships with galleries based in Luxembourg, Singapore, and the USA, FORM recognises the value in having more opportunities to engage with the international art market and strongly supports all art centres having the opportunity to do this. In order to make this possible, greater support from Federal and State governments, national and state institutions, and Australian galleries would be essential. Methods for doing this could include cultural diplomacy, high-level and targeted marketing campaigns to identified key audiences overseas, and support for institutions to tour exhibitions of Aboriginal art internationally.

FORM acknowledges the diversity of Aboriginal art-making across Australia and sees the immense benefit that varied, ethical art and product creation brings to the marketplace. Diversity in product lines and price points benefits buyers across all budgets and enables art centres to reach new audiences who may not have historically been engaged in purchasing Aboriginal and Torres Strait Islander art. Central to this is our desire to see more inter-industry collaboration, particularly with the fashion and design industries. Greater inter-industry collaboration would allow for increased arts practice and skills development for art centres and could potentially lead to innovation across new art mediums and product development, as well as important audience development.

Summary of recommendations for Sustainable Growth:

- More curators and gallerists encouraged/funded to travel to remote art centres to meet with artists and staff.
- An increase in art marketplace opportunities in regions where they are not currently operating.
- Increased emphasis on engaging with international audiences, entailing greater support (financial or networking) from Federal and State governments, national and state institutions, and Australian galleries.
- Greater inter-industry collaboration to nurture innovation across new art mediums.

2. DEVELOPING SKILLS IN THE INDIGENOUS VISUAL ARTS INDUSTRY

Through work in regional Western Australia, FORM has noted many art centre staff require greater support and skills development to ensure their success and longevity in the industry. From our communication with art centres, we understand the skills that are most in need are fine arts, marketing, human resources, financial, and social services support. While art centre staff and artworkers are often already juggling many commitments and utilising a wide range of skills, FORM sees the value in more training and support being available so these staff can refine their skills and feel equipped for success in the industry. This will lead to stronger art centres with increased staff retention. This training could occur both before and during an employee commences their contract. Some possible methods for support could

include the provision of funding for staff to undertake social work training before commencing work, and an ongoing program of development opportunities that are delivered across individual art centre locations, central locations, and online.

FORM supports increased funding for art centre managers, staff and artists to connect with their peers and industry professionals. FORM supports a focus on networking and training for staff and artists at all industry events. Networking and training opportunities are incredibly important, especially for new staff, and while industry events provide a great opportunity for these to occur, there is also value in hosting these events at art centre locations. Spinifex Hill Studio staff have also expressed the importance of training occurring on site as it allows for expert practitioners, peak body staff, and art centre peers to offer tailored support within the parameters of the individual art centre.

Central to providing assistance to art centres staff is the support from service organisations. FORM supports increased funding for service organisations in order to enable them to provide greater support and networking opportunities for artists and art centres. More support for service organisations means more support for art centres.

FORM has witnessed a need for greater encouragement of and assistance for new Indigenous-owned and operated art groups who have a desire to transition into strong, stable and successful enterprises. This has been evident through our work in Roebourne with three art groups who are all at varying stages of development and who are not currently receiving IVAIS funding. Two of these art groups, Juluwarlu Art Group and Cheeditha Art Group, are in the first five years of operating. While these art centres have committed artists, they are currently limited by low levels of resourcing and would benefit greatly from the ability to employ dedicated art centre managers and receive IVAIS operational and artists employment support. FORM supports the concept of an IVAIS supported art centre 'seed program' to assist art groups to grow. This could act both as a support mechanism and transition path for art groups to develop into successful enterprises.

Summary of recommendations for Developing Skills:

- Funding and support for art centre staff to undertake more training focused on developing skills in fine arts, marketing, financial, and social work, and an ongoing program of development opportunities that are delivered across individual art centre locations, central locations, and online.
- A focus on networking and training for staff and artists at all industry events.
- Increased support for service organisations to be able to provide more support to art centres.
- Establish an IVAIS supported art centre 'seed program' to assist art groups to transition into successful enterprises.

3. STRENGTHENING DIGITAL CAPABILITIES

While digital technologies cannot overcome all of the challenges of remote locations, FORM has seen the capacity digital technologies have to help overcome some important challenges of remote locations, particularly in relation to accessing the online art market.

Spinifex Hill Studio launched a new e-commerce website in late 2019 and since then has experienced a marked increase in income due to artwork sales through this website. Having a well-functioning website already established by the time the COVID-19 pandemic arrived in Australia meant Spinifex Hill Studio was well placed to weather the challenges this presented, and saw an increase in sales from the same period in the previous year. Spinifex Hill Studio's experiences throughout COVID-19 have confirmed there is a strong and healthy online market for Aboriginal art.

It is important to note this success was not just due to the existence of the website, but also due to the Studio having staff that were skilled in managing the website and the sales that occur through it, and who are adept at running online marketing campaigns to promote online sales. FORM sees these skills as vital to art centres being successful in the digital sphere. Most art centres do not have the resources to employ a marketing specialist, however more opportunities for staff to participate in marketing training would help art centres more effectively promote online sales of their artwork. Thus, as mentioned earlier in this submission, FORM supports more investment into and facilitation of the development of marketing and digital skills for art centre staff.

Summary of recommendations for Strengthening Digital Capabilities:

- There is a healthy online market for Aboriginal art and this is worth further investment.
- Investment into websites must coincide with investment in the employment and upskilling of staff in the e-commerce and digital space.

4. INAUTHENTIC ART AND LEGAL PROTECTIONS

Please note, this section reiterates some of the points FORM made in 2017 in its submission to the House of Representatives Inquiry into the proliferation of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise across Australia. FORM believes these points are still salient and in need of reiterating.

Defining 'authentic Indigenous art'

When considering a definition for 'authentic Indigenous art', it is essential to actively involve Aboriginal and Torres Strait Islander peoples in forming this definition, and in devising solutions for mitigating the prevalence of the proliferation of inauthentic products.

Although we are not an Aboriginal and Torres Strait Islander governed and operated organisation we suggest considering the following key points in the definition of cultural authenticity in this context:

1. There are over 250 Aboriginal and Torres Strait Islander language groups/nations in Australia, each of which has its own cultural specificities, connections to place, cultural designs and stories that are relevant to the specific area of land they are from. As such, there is no unified Aboriginal

and Torres Strait Islander design or 'style' of art and craft that is relevant nation-wide. There is a great diversity in the culture of Aboriginal nations.

2. Authentic Aboriginal and Torres Strait Islander art and crafts are designed or created by a person who self-identifies as Aboriginal and/or Torres Strait Islander. Or, in the case of designs or works that are licenced, that the original work has been created by a person who self-identifies as Aboriginal or Torres Strait Islander, and that person has been ethically and appropriately consulted and compensated throughout the process of licensing for the use of their design or works to ensure that the artistic integrity of the work is maintained.

FORM supports the concept that to be considered 'authentic Indigenous art,' products should either be made by, or under licence from, an Indigenous artist/s. Furthermore, the definition of authentic Aboriginal and Torres Strait Islander art and craft does not place limitations on the kinds of subjects, styles, designs, materials, and stories that can be used; the artists should have autonomy regarding the types of product they would like to develop. For example, an authentic artwork does not have to depict or reference traditional stories or be in a particular style in order for it to be authentic.

Additionally, the definition of authentic Aboriginal and Torres Strait Islander art and craft does not necessarily stipulate where or how a commercially produced art or craft product has been produced to give artists the option to utilise international supply chains to derive commercially viable product for sale. For example, if an artwork has been ethically and appropriately licenced, and is printed on a scarf that is produced outside of Australia, this does not affect its authenticity, given that the artistic integrity has been determined through the ethical and appropriate licensing of the work for its production.

It is important to note that an artwork or product being defined as authentic does not necessarily mean it has also been ethically produced, promoted, and/or traded. There are still questionable practices at play in the facilitation, procurement, and sale of Aboriginal and Torres Strait Islander art by individuals who work outside the art centre model and FORM supports the continued investigation into these practices.

Protecting Indigenous cultural expressions and moral, cultural, and intellectual property rights

FORM supports the strengthening of Australian Consumer Law as a means of protecting income streams for Aboriginal and Torres Strait Islander people where copyright and intellectual property laws currently fail to do so. A strengthening of consumer protection laws will reduce the risk of purchasers throughout the supply chain trading fake Aboriginal and Torres Strait Islander art and craft products and merchandise. This will also protect consumers from deception in an industry where the distribution of fake products is prevalent.

The prevalence of the art centre model as part of the market's value chain has fostered greater awareness about the importance and provenance of ethical and ethical artwork procurement across the sector. Broadly, the art centre model better equips consumers to make informed purchasing decisions, and enables income streams for Aboriginal and Torres Strait Islander people. Despite this, unethical practices in the facilitation, procurement and sale still exist within the commercial Aboriginal and Torres Strait Islander art industry. Likewise, there is much less best-practice procurement of ethically made/authentic

Aboriginal and Torres Strait Islander merchandise, specifically within tourist value chains, as is evidenced by the availability of fake product.

FORM supports the continuation and further resourcing of the bodies that preserve and promote the ethical trading of Indigenous art, such as the Indigenous Art Code. FORM also supports the introduction of laws that prohibit the importation and selling of fake Indigenous art and products, and supports the concept of a governing body that has the power to enforce these frameworks for the ethical trading of Indigenous art.

In addition to laws prohibiting the importation and selling of fake Indigenous art and products, FORM supports the following additional alternative methods of restriction that combine education and preventative initiatives to increase the awareness among travellers:

1. prominently placed messages at airports/ports to inform inbound international travellers of the negative impacts of purchasing fake art, and promotion of ethical labelling standards;
2. the prohibition of fake art and craft merchandise as a specific requirement of the Australian Tourism Accreditation Program and supported by Regional Tourism Organisations.
3. encourage local governments, shires, or councils to stamp out the sale of fake merchandise within their local area by including specific provisions within their Reconciliation Action Plans with governance measures to enable tangible action; and,
4. partnerships/collaborations between major arts and cultural organisations and other stakeholders to promote and showcase the benefits of ethical and authentic purchases of Aboriginal and Torres Strait Islander products.

As part of the Artists in the Black program, Arts Law visit art centres across Australia to tailor education, legal assistance and wills services to the needs of the artists they are visiting. FORM supports this program to continue, and advocates for Arts Law to travel to art centres more regularly. These visits provide valuable education and advocacy opportunities. Arts Law are able to help staff and artists understand the current frameworks that are place to protect Indigenous cultural expressions, and to facilitate greater clarity around Indigenous Cultural Intellectual Property and how to protect this. Furthermore, FORM support the inclusion of Indigenous Cultural Intellectual in all agreements and contracts.

Certification trade mark and labelling

We advocate for a unified and, legally enforceable, national labelling standard (as per truth in labelling fair trading laws and food laws in Australia and New Zealand) to minimise the risk of purchasing fake merchandise to consumers. This will at least protect income streams for Aboriginal and Torres Strait Islander artists in the absence of copyright laws that protect the rights of a language group or nation.

FORM supports transparency and ethics within licensing arrangement frameworks which aim to protect the licensor in instances where asymmetrical bargaining power exists in favour of the licensee. Furthermore, these frameworks are endorsed under a specific code or charter which forms part of

labelling and packaging standards on Aboriginal and Torres Strait Islander art and craft products or merchandise. This imparts consumers with the confidence that they are making an ethical purchase. Broadly, we suggest in the case of a licensed design or work, the following should apply:

1. the artist has right of attribution, including their name and a reference to the original artwork;
2. the integrity (moral rights) of the artist has been respected;
3. the artist has received or negotiated a fair licensing fee/payment under a transparent licencing agreement; and,
4. the artist has had the opportunity to access legal advice on the terms of the contract or agreement.

Summary of recommendations for Inauthentic Art and Legal Protections:

- Strengthening of Australian Consumer Law.
- Continuation and further resourcing of the bodies that preserve and promote the ethical trading of Indigenous art, such as the Indigenous Art Code.
- Legislation that prohibits the importation and selling of fake Indigenous art and products and support for a governing body to enforce these frameworks.
- Implementation of education and preventative initiatives that increase awareness to tourists around the purchasing of fake Indigenous art and products.
- An extension of the service provided by the Artists in the Black program.
- Investment in a unified and, legally enforceable, national labelling standard to minimise the risk of purchasing fake merchandise to consumers.

5. PRODUCTIVITY COMMISSION STUDY

FORM supports the Productivity Commission's study into the nature and structure of the Indigenous arts and crafts market to address deficiencies in the market. FORM supports the Productivity Commission investigating:

- Buyer behaviour
- Inauthentic Aboriginal art
- Unethical treatment and exploitation of Aboriginal artists by private dealers

Elements of buyer behaviour that FORM supports investigating include: through which channels purchases are made; what influences these purchase decisions; which price points are the most popular and what is the breakdown of these; what buyers are looking for; and how buyers discover new artists or art centres.

FORM supports the continued investigation into inauthentic Aboriginal art and into the unethical practices that occur in the production, sale and promotion of Indigenous art by some private dealers. More education for the Australian public and visiting tourists about how to ensure they are ethically purchasing Indigenous art and products, and the importance of doing so, is key to the sustainability of art centres and

the Indigenous visual arts market. FORM supports the implementation of a national awareness campaign in support of Aboriginal art centres and ethical purchasing as a priority to equip consumers with the knowledge to make informed purchasing decisions that support the ethical production and sale of Indigenous art and products.