

AUSTRALIA COUNCIL

Response to the Productivity Commission's draft report on
Aboriginal and Torres Strait Islander Visual Arts and Crafts

September 2022

To: Romlie Mokak, Lisa Gropp and Joanne Chong

Productivity Commission

GPO Box 1428

Canberra City ACT 2601, Australia

August 2022

Dear Commissioners

As the Australian Government's arts investment, development and advisory body, the Australia Council congratulates the Productivity Commission for the comprehensive and considered draft report on Aboriginal and Torres Strait Islander Arts and Crafts.

There have been decades of consultations and inquiries on issues such as the need for greater protection of the Indigenous Cultural and Intellectual Property (ICIP) within First Nations arts with few outcomes – we are hopeful that the time for action and real change is upon us.

As you are aware, in 2018 and 2019 the Australia Council led a national consultation on a proposed national body for First Nations arts and culture, with the working title of a 'National Indigenous Arts and Cultural Authority (NIACA)'.

Our response to the draft report is guided by the findings of that consultation as well as many years of investment, sector discussion and advocacy.

Our submission highlights opportunities for a national body to support the Productivity Commission's recommendations, including proposed cultural rights legislation; campaigns around ethical trade; investment in referral pathways for artists; and a formal partnership for shared decision-making between government and First Nations communities to inform funding priorities for the First Nations visual arts and craft sector.

We will be publishing a report on the findings of our consultation on a national body in the coming weeks so that the First Nations arts and culture sector can continue the discussion and self-determine next steps. There will be opportunity for further discussion later this year at [Purrumpa](#): a historic occasion that will mark the largest national gathering of First Nations arts and culture in 50 years, convened by the Australia Council from 31 October to 4 November 2022 in Adelaide.

The Australia Council warmly welcomes the opportunity to continue to support the Productivity Commission's work examining the value, nature and structure of markets for Aboriginal and Torres Strait Islander arts and crafts, and policies to address deficiencies in these markets.

Franchesca Cubillo

Executive Director, First Nations Arts and Culture

Australia Council for the Arts

Key points

The Australia Council welcomes the proposed labelling scheme for *inauthentic* products as a potential way to address challenges that have been faced by national authenticity labelling schemes in the past, including moving the burden away from First Nations artists and art centres and acknowledging local and regional responses to authenticity labelling in place. We believe resourcing for monitoring, enforcing compliance, and education and awareness raising will be essential to the scheme's success. We look forward to seeing the labelling scheme implemented and enforced among those who distribute inauthentic products. The NIACA consultation highlighted potential role for a national body in campaigns to promote ethical trade.

The Australia Council endorses the recommendation of new cultural rights legislation and proposes that the standalone law should affect ICIP in all First Nations arts and cultural expression. The NIACA consultation highlighted a potential role for a national body in consulting on standalone legislation and in administering legislation, for example in overseeing protocols and consent process.

The Australia Council supports the proposed overarching ICIP strategy as well as a new law to protect ICIP in First Nations arts and cultural expression. This proposal addresses findings of the NIACA consultation about the need to consider arts and cultural expression within a holistic approach – for First Nations communities it is all connected. The Australia Council welcomes the opportunity to continue to support whole-of-government collaboration.

The Australia Council welcomes the evaluation of funding arrangements in partnership with First Nations sector representatives. A national body could play an important role in such an evaluation. The review should consider the opportunity for art centres to operate as commercial businesses with greater access to the substantial income stream benefiting non-Indigenous dealers and galleries. It should also ensure adequate support for independent artists and address the need for a coordinated sector-wide national workforce strategy.

The Australia Council endorses the recommendation that First Nations people should be part of shared decision-making in setting objectives for government funding for First Nations visual arts and crafts. This shared decision-making should apply to funding for First Nations arts and culture more broadly and highlights the need for a national body for First Nations arts and culture.

The Australia Council endorses the commitment to strengthening the Indigenous Arts Code. Greater regulation is needed to address longstanding unethical conduct in the sector, including ensuring artists are receiving a fair share of the \$74–\$90 million generated from sales of artworks by dealers and galleries.

The Australia Council endorses the proposed investment in referral services to ensure artists can navigate the services available. A coordinating agency is a longstanding gap in national infrastructure and coordination between existing organisations, services and community decision-making structures was proposed as a key role for a national body through our NIACA consultation.

Many participants spoke of the national body as an agile 'facilitator', 'coordinator', 'connector' or 'go to' referral agency which could work both-ways: acting as a portal to First Nations arts and culture for industry and government; and helping First Nations artists to navigate existing

networks and services and have their voices heard nationally. Subject to consultation, one of the options would be for the Australia Council to take on this referral agency role.

The Australia Council congratulates the Productivity Commission on filling the long-standing sector data gap of spending on First Nations visual arts and craft. We support the continued development of the economic picture, including data on public art commissions, corporate sales, independent artists, textile design and fashion.

The Australia Council is preparing to publish findings of the NIACA consultation, and its history and context, so that the First Nations arts and cultural sector can continue the discussion and self-determine the next steps.

ABOUT THE AUSTRALIA COUNCIL

The Australia Council has a statutory role to support Aboriginal and Torres Strait Islander arts practice.¹ We have a long-term commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to strengthen Australia's First Nations arts and cultural ecosystem. Under our strategy *Creativity Connects Us*,² the Australia Council is prioritising investment in First Nations arts and culture.

The Council provides a range of critical First Nations-led support to Indigenous visual artists. We do this through our project grants and multi-year organisational investment; targeted investment through strategic programs; capacity building and strategic development nationally and internationally; the National First Nations Arts Awards; and research that investigates the First Nations arts ecology and its audiences and markets.

In particular, we invest in independent First Nations artists; First Nations-led organisations and art fairs; innovative projects to expand national and international markets; and professional and digital capacity building. Through our advocacy and protocols we encourage an ethical marketplace.

Since the establishment of the Australia Council's Aboriginal Arts Board in 1973, the Council's investment in First Nations arts has been underpinned by First Nations thought leadership and self-determination. See Attachment A for a list of those who have served as part of our First Nations thought leadership. In this regard, subject to the sector's view, the Council via its First Nations thought leadership is well placed to take on a national referral agency role that could support the Productivity Commission's recommendations.

The Australia Council's First Nations Arts and Culture Strategy Panel provides expert strategic advice to ensure the effective delivery of our programs and strategic activities. Our dedicated funding to First Nations people, groups and organisations through our grants program is assessed wholly by Aboriginal and Torres Strait Islander peer assessors.

The Australia Council's long-term investment in the First Nations visual arts industry is a strategic priority that delivers strong social, cultural and economic returns.

¹ It is a function of the Australia Council to support Aboriginal and Torres Strait Islander arts practice under Section 9 of the *Australia Council Act 2013* (Cth).

² Australia Council 2020, [*Creativity Connects Us: Corporate Plan 2020–24*](#).

RESPONSE TO RECOMMENDATIONS

5.1 A mandatory labelling scheme for inauthentic products should be developed

The Australia Council welcomes this proposal as a potential way to address challenges that have been faced with attempts to introduce national authenticity labelling schemes in the past, which were also raised through our consultation on a national body. These include costs and complexity for artists, burden of proof of Aboriginality, and failure to account for region-specific styles of art and responses to authenticity labelling.

The Australia Council's consultation on a national body found conflicting views on whether there should be an authenticity labelling scheme or trade mark. While some respondents felt that a national body should specifically undertake a structured process that would authenticate First Nations arts and artists through a clear system of endorsement such as an authenticity labelling scheme or trade mark, others were concerned that a structured authentication system would not be successful and would be inappropriate. While two thirds of First Nations survey respondents thought an authenticity labelling or trade mark scheme was an important role for a national body, this was rated relatively low compared to other ICIP activities and activities overall.

We understand the proposal for a mandatory label of *inauthentic* products addresses some of the concerns by placing the onus of mandatory compliance on those who are making and selling mass-produced First Nations souvenirs and consumer products, which is a key area of concern. Enforcement and recourse under Australian Consumer Law to prevent the selling and distribution of inauthentic art and craft products more effectively is something that the Australia Council advocated for through the 2017 inquiry into inauthentic First Nations arts.³

Importantly, the proposed labelling scheme moves the burden away from First Nations artists and art centres and acknowledges local and regional responses to authenticity labelling are already in place in the sector. We look forward to seeing the labelling scheme implemented and enforced among those who distribute inauthentic products.

We agree with the Productivity Commission's assessment that there will need to be resourcing for monitoring and enforcing compliance, as well as education and awareness raising measures that help consumers distinguish between authentic and inauthentic products – we think these elements will be essential to the scheme's success.

There is potential for a national body to play a role in awareness raising: through our NIACA consultation, eight in ten First Nations survey respondents thought that running campaigns to promote ethical trade or prevent cultural appropriation would be a high priority activity for a national body (79% of First Nations respondents, and 67% of all respondents). Several forums also raised national marketing campaigns to promote best practice and First Nations rights.

³ Australia Council 2017, [*Australia Council submission to the Standing Committee on Indigenous Affairs Inquiry into the Proliferation of Inauthentic Aboriginal and Torres Strait Islander 'Style' Art and Craft Products.*](#)

7.2 New cultural rights legislation should be introduced to recognise and protect cultural assets in relation to visual arts and crafts

The Australia Council endorses the recommendation of new cultural rights legislation. The Council has long advocated for specific legislation to protect the ICIP rights of First Nations communities,⁴ and over previous decades, members of the First Nations arts and cultural sector have continued to raise the need for a national body to support Aboriginal and Torres Strait Islander peoples to oversee and protect their ICIP rights.

The need to support, promote and protect ICIP rights was a key theme of the consultation on a NIACA, across submissions, survey responses, forums around the country, and industry and youth roundtables. A national body was noted as an important mechanism to progress change, and to develop or oversee protocols that set standards for consent processes.

For some participants, ICIP was the most important issue for a national body to address, and it was a critical one for many others. Several consultation forums discussed deficiencies in current Australian laws and suggested that legal expertise and lobbying for legislative change should be part of a national body for First Nations arts and culture. The need for legislative change was also raised through the survey and submissions. Participants highlighted a potential role for a national body in consulting on standalone legislation, as well as the importance of considering what role a national body would play in administering legislation.

The 2018 inquiry report on fake art also supported establishment of a NIACA as part of Australian Government consultation on stand-alone legislation to protect ICIP:

‘The committee recommends that the Australian Government begins a consultation process to develop stand-alone legislation protecting Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.

The committee is mindful of the current Australia Council inquiry into the feasibility of a National Indigenous Art and Cultural Authority. The committee fully supports the establishment of this body and recommends that it be part of the consultation process.’⁵

7.1 An Indigenous Cultural and Intellectual Property Strategy is needed to coordinate regulatory measures

The Australia Council supports the proposed overarching holistic ICIP strategy as well as a new law to protect ICIP in First Nations arts and cultural expression. The Australia Council is represented on the Indigenous Knowledge Working Group run by IP Australia and welcomes the opportunity to continue to support a collaborative whole-of-government approach. While we have a focus on the ICIP in arts and cultural expressions, for First Nations communities it is all connected – land, sea, country, art, culture, foods, sacred sites.

⁴ See above.

⁵ Recommendation 8, House of Representatives Standing Committee on Indigenous Affairs 2018, [*Report on the impact of inauthentic art and craft in the style of First Nations peoples*](#), Commonwealth of Australia, Tabled December 2018, p.xxi.

The Australia Council's consultation on a national body highlighted two conflicting views that could be both be addressed through the approach of addressing the ICIP in arts and cultural expression within an overarching strategy:

- Some consultation participants argued strongly that focussing only on the arts creates an illegitimate distinction between interrelated forms of Indigenous knowledges and practices.
- Others argued that broader applications of Indigenous knowledges have additional complexities including defending patent rights, and that there are other bodies in place to cover areas such as languages and biodiversity.

A concern was raised that fragmenting ICIP into arts and other knowledge categories has the potential to jeopardise the cultural rights inherent in other knowledges – an overarching strategy is needed to ensure that the ICIP in arts and cultural expression is protected within a holistic approach.

The new law should also complement Cultural Heritage laws at state and territory levels (for example Victoria's [*Aboriginal Heritage Regulations 2018*](#)), ensuring they are joined up and that there are no conflicts or loopholes.

In the long term, there is potential for a national body for First Nations arts to be an interim step towards a broader national Indigenous cultural authority network protecting all areas of ICIP. This was proposed as part of scoping work by the Australia Council's National Indigenous Arts Reference Group in 2010, and was a view was echoed in the NIACA consultation.

10.3 Australian Government funding should be evaluated to inform future arrangements

The Australia Council welcomes the evaluation of funding arrangements to inform funding beyond 2025, in partnership with Aboriginal and Torres Strait Islander representatives of the sector. This review should ensure Indigenous Visual Arts Industry Support (IVAIS) investment is fit-for-purpose and keeping pace with industry change and commercial opportunities; as well as adequate support for independent artists (which as the Productivity Commission's draft report notes, is currently limited). It should also address the need for a coordinated sector-wide national workforce strategy (see '9.1 Skills and professional development needs' on page 12 for more on this).

A national body could play an important role in such an evaluation. Ensuring First Nations arts and culture programs come from a position of cultural authority was considered a 'high priority' activity by 8 in 10 First Nations survey respondents during the NIACA consultation (80%, and 78% of all respondents). This was among the highest rated activities for a national body overall.

The evaluation should address the real term decline in both IVAIS and Australia Council funding and ensure that cultural maintenance and practice is supported as well as commercial outcomes. In addition, reviewing IVAIS Funding arrangements should also consider the opportunity for art centres to operate as small businesses by entering the commercial gallery space and or engaging directly with dealers, thus potentially securing a small percentage of this substantial income stream. This secondary market stream is currently occupied by non-Indigenous commercial operators who have been major financial

beneficiaries for the past five decades. A review of IVAIS should consider the opportunity for art centres have the option to operate in this secondary marketplace if they choose.

The Australia Council recommends inclusion of support for First Nations textile design and fashion in the evaluation. Textile design and fashion is an interconnected part of the market that would benefit from increased investment, support and development.

10.4 Aboriginal and Torres Strait Islander people should be part of shared decision-making in setting objectives for government funding for visual arts and crafts

The Australia Council endorses this recommendation, which highlights the need for a national body for First Nations arts and culture. Developing and strengthening structures so that First Nations people can share in decision-making with governments on Closing the Gap is a priority reform area under the National Agreement.⁶

One of the strongest themes of our consultation was around the current 'gap', 'lack' or 'need' for a First Nations-led body for First Nations arts and culture at the national level. This was highlighted in submissions, forums and survey responses. Sovereignty and self-determination were also key themes of the consultation. There was a strong view that a national body for First Nations arts and culture should be owned, led and run by First Nations people.

Other areas have national representation to partner in shared decision-making with government. However, national representation for First Nations arts and culture is a longstanding gap in national infrastructure since the demise of the National Indigenous Arts Advocacy Association and was recommended through the *Making Solid Ground* review.⁷

The Australia Council is committed to First Nations self-determination in our First Nations arts investment and recognises the importance of First Nations peoples' self-determination, cultural authority and leadership to our collective prosperity.

Since the establishment of the Australia Council's Aboriginal Arts Board in 1973, the Council's investment in First Nations arts has been underpinned by First Nations thought leadership and self-determination. See Attachment A for a list of those who have served as part of our First Nations thought leadership.

10.1 The Indigenous Art Code can be strengthened through a joint commitment of government and industry

The Australia Council endorses this recommendation, and notes that greater regulation is needed to address the longstanding unethical conduct in the sector, including ensuring artists are receiving a fair share of the \$74–\$90 million generated from sales of artworks by dealers and galleries.

In addition to the Indigenous Art Code, the Australia Council recommends continued support for Resale Royalties, as this has led to greater transparency of resale values for artists.

⁶ Coalition of Peaks 2022, [National Agreement: Priority Reform 1](#).

⁷ Among the 10 priority areas identified were 'national networked infrastructure' including a national peak body across art forms. Fieldworx 2008, [Making Solid Ground: Infrastructure and Key Organisations Review](#), for the Aboriginal and Torres Strait Islander Arts Board (Australia Council) November 2008, Platform 10, p.24.

10.2 Artists should be aware of and able to access legal support services

The Australia Council endorses this recommendation and the proposed investment in referral services to ensure artists can navigate the services available. A coordinating agency is a longstanding gap in national infrastructure that was recommended through the National Indigenous Arts Advocacy Association review,⁸ and coordination between existing organisations and services was proposed as a key role for a national body through our recent consultation.

A key theme of the NIACA consultation was that what is needed is coordination, not duplication, of the work and services of existing region and art form-based peak bodies; and support for these organisations and for First Nations artists and creatives.

Consultation participants suggested mapping gaps in existing services, and a potential role for a national body as an agile ‘facilitator,’ ‘coordinator,’ ‘connector’ and a ‘go-to’ referral agency which could work both-ways: acting as a portal to First Nations arts and culture for industry and government; and helping First Nations artists to navigate existing networks and services and have their voices heard nationally. Subject to the sector’s view, one of the options would be for the Australia Council to take on this referral agency role.

The Council will be publishing our report in coming weeks and the sector will discuss next steps at the national gathering for [Purrumpa](#) in Adelaide from 31 October to 4 November 2022.

RESPONSE TO INFORMATION REQUESTS

10.1 Re: a formal shared decision-making partnership with government; sector support for development of a national peak advocacy organisation; process; and government support

A national body for First Nations arts and culture is a long-standing gap in national infrastructure since the defunding of the former National Indigenous Arts Advocacy Association in 2002; and sector participants advocated for a peak body for First Nations arts through the Australia Council’s 2008 *Making Solid Ground* review.⁹ The absence of a national representation has meant that First Nations artists and cultural organisations have been constrained in their efforts to develop coordinated, cross-art form and community driven solutions to challenges facing the sector.

The Australia Council’s 2018 discussion paper on a proposed national body drew on the work of the Council’s National Indigenous Arts Reference Group between 2008 and 2010 and ongoing sector discussion and needs.

The key finding of the NIACA consultation was overwhelming but qualified support for a national body for First Nations arts and culture. The need for high level representation and advocacy for First Nations arts and culture was a key theme of the consultation, including the need for a national body to influence recognition of First Nations cultures in policy settings;

⁸ *Final Report of the Review of the National Indigenous Arts Advocacy Organisation* 2002 [unpublished], commissioned by the Aboriginal and Torres Strait Islander Arts Board of the Australia Council, p.vi and viii.

⁹ Among the 10 priority areas identified were ‘national networked infrastructure’ including a national peak body across art forms. Fieldworx 2008, [Making Solid Ground: Infrastructure and Key Organisations Review](#), for the Aboriginal and Torres Strait Islander Arts Board (Australia Council) November 2008, Platform 10, p.24.

champion First Nations arts and cultures nationally and internationally; represent First Nations artists on policy issues; and ensure First Nations arts and culture programs come from a position of cultural authority.

Qualifications included ensuring it would coordinate, not duplicate, existing bodies and services; and that it would not take funding from an already oversubscribed sector.

A way forward that had traction was the idea of an organisation formed via a network or alliance of existing organisations across art forms and regions. This model could be similar to the Coalition of Peaks that works with governments on Closing the Gap.

The Council will be publishing our consultation report in coming weeks and the sector will have an opportunity to discuss next steps at Purrumpa. Government can assist by listening to the outcomes of those discussions and investing in the way forward that the sector self-determines.

5.1 Are the authenticity criteria for the scheme appropriate?

As the draft report notes, authenticity is complex. Findings from the NIACA consultation highlighted that cultural appropriation is not only carried out by non-Indigenous people; it also occurs among First Nations people.

We welcome the diagram in the draft report that shows that there can be ICIP breaches that meet this definition of ‘authenticity’ which is focused on material that is First Nations made or licensed.¹⁰ Given authenticity is a contested term, the Productivity Commission could test the idea of whether ‘First Nations made or licensed criteria’ could be an alternative descriptor to ‘authenticity criteria’.

The Australia Council recognises that protocols are important as well as First Nations creatorship, and since 2002, we have published a protocol guide for using First Nations cultural property in the arts.¹¹ Creative practitioners who work with First Nations artists or engage with Indigenous cultural heritage in projects, and are funded by the Australia Council, are required to comply with this protocol guide as a condition of funding, with evidence of community support considered seriously by First Nations peer assessors.

Overseeing protocols and consent processes was highlighted as a key role for a national body for First Nations arts and culture through our consultation.

7.1 What should be protected by the new cultural rights legislation? Should there be limits on protection?

The Australia Council’s view is that the standalone law should affect ICIP in all First Nations arts and cultural expression. The only limits should be to balance First Nations peoples’ rights to evolve their own culture. Current copyright exceptions are not appropriate (for example around parody and satire).

¹⁰ Figure 6, ‘The interplay between authenticity, inauthenticity and Indigenous Cultural and Intellectual Property’ in Productivity Commission 2022, [Draft Report – Aboriginal and Torres Strait Islander Visual Arts and Crafts](#).

¹¹ Australia Council 2020, [Protocols for using First Nations Cultural and Intellectual Property in the Arts](#).

International examples and work of the World Intellectual Property Organisations (WIPO) Intergovernmental Committee¹² can help inform the new law. International examples include:

- *Special System for Collective Intellectual Property Rights of Indigenous Peoples (Law No. 20)*, established to protect the collective ICIP in the creations of the people of Panama. This was one of the first laws that protects collective Indigenous rights. Implementation has demonstrated the need for resourcing to enforce ICIP laws.¹³
- The Pacific Model Law set out a framework to protect Traditional Knowledge and Traditional Cultural Expressions in Pacific Island nations based on prior informed consent for all non-customary uses. Under this model, users can either apply to a 'Cultural Authority'; or directly with Traditional Owners using an authorised user agreement provided by a 'Cultural Authority'.¹⁴

In addition, Canada has recently introduced the *United Declaration on the Rights of Indigenous Peoples Act*, which provides 'a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing and cooperative relations.'¹⁵

The introduction of specific legislation to protect the intellectual property rights of First Nations communities would be in line with the UN Declaration, which Australia announced support for in 2009. Article 31 states that Indigenous peoples 'have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.'¹⁶

7.2 What are the merits, drawbacks and challenges of giving a government regulator the power to bring cases in relation to cultural misappropriation?

The proposed labelling of inauthentic products under Australian Consumer Law would enable the ACCC to more effectively prevent the selling and distribution of art and craft products that are not First Nations made or licensed. Enforcement and recourse under Australian Consumer Law to prevent the selling and distribution of inauthentic art and craft products more effectively is something that the Australia Council advocated for through the 2017 inquiry into inauthentic First Nations arts.¹⁷

When it comes to protection of ICIP, First Nations self-determination in developing and overseeing protocols or legislation is vital. In Panama, the government works with the cultural authority on these kinds of issues.¹⁸

¹² [WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore](#), viewed 27 October 2021.

¹³ Patricia Adjei 2018 Churchill Fellowship, [Investigating the practical application of laws in the USA and Panama that protect Indigenous cultural rights](#), Awarded by the Winston Churchill Memorial Trust, p.38.

¹⁴ South Pacific Community with legal expert teams from WIPO and UNESCO 2003, *Explanatory Memorandum for the Model Law for the Protection of Traditional Knowledge and Expressions of Culture*. See Terri Janke 2009, [Beyond Guarding Ground: A vision for a National Indigenous Cultural Authority](#), Terri Janke and Company, p.34.

¹⁵ Government of Canada, [Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act](#), viewed 8 August 2022.

¹⁶ Article 31, [United Nations Declaration on the Rights of Indigenous Peoples 2007](#).

¹⁷ Australia Council 2017, [Australia Council submission to the Standing Committee on Indigenous Affairs Inquiry into the Proliferation of Inauthentic Aboriginal and Torres Strait Islander 'Style' Art and Craft Products](#).

¹⁸ See Patricia Adjei 2018 Churchill Fellowship, [Investigating the practical application of laws in the USA and Panama that protect Indigenous cultural rights](#), Awarded by the Winston Churchill Memorial Trust.

Our recent consultation highlighted that an important aspect of a self-determined national body for First Nations arts and culture would be its independence, particularly from government and corporate influences or interests that may compromise its mission and integrity. However, it would need consistent funding.

7.3 What types of conduct should be considered an infringement of a traditional owner's cultural rights? • How should a court determine whether a user has been granted authorisation to use a cultural asset in a certain way?

Unauthorised uses of ICIP infringe traditional cultural owners' rights. The ICIP in First Nations arts and cultural expressions is broad and not necessarily in material form, so the copyright limitations are not appropriate.

NIACA consultation participants highlighted that cultural appropriation occurs in other art forms and cultural spaces beyond the visual art market; and includes First Nations people 'telling stories that aren't theirs'. Many believed that a national body should address this issue.

Following protocol is an important element of cultural rights and authorisation, and the NIACA consultation highlighted potential for a national body to oversee protocols and facilitate consent process.

7.4 What institutional arrangements are needed to support a new cultural rights regime? • What types of dispute resolution options should be available? • Is there a case for a statutory Cultural Authority?

In addition to considering the potential role of a national body for First Nations arts and culture, for example to set standards for consent processes and oversee protocols; there is a need for funding for legal representation and enforcement.

Arts Law provides mediation and should be resourced to provide mediation for artists to use. Among survey respondents in the NIACA consultation, mediation was a lower priority activity for a national body compared to other activities and mediation was raised in just a small handful of forums.

Few NIACA consultation participants said they wanted a national body for First Nations arts and culture to be a statutory authority (15% of First Nations survey respondents). Participants stressed the importance of decolonising the structure of any national body. They said that a national body should be built on models that reflect First Nations cultures instead of Western cultural structures, including by avoiding hierarchy. Some suggested looking to the First Nations peoples of the Americas or Canada for legal models such as 'an assembly of nations'.

A recurring theme of the consultation was the need to support local and regional decision making and champion the regional and art form-based bodies that already exist.

9.1 Skills and professional development needs

There is a need for an overarching, coordinated whole-of-sector national workforce strategy to fill skills gaps, create career pathways and address workforce needs in the First Nations visual arts and craft industry – an industry built on the strength of First Nations culture and talent, in which there is substantial development of physical infrastructure underway (for example, new galleries and cultural centres). As a key area of strength and opportunity, arts

and culture should be central in cross-portfolio workforce audits, investment and strategies for First Nations people's professional development and economic participation.¹⁹

Accredited training for art centre workers is needed, including for non-English writers and speakers. Training must be culturally safe and appropriate (for example, cultural leave).

Existing artworker courses include the [NGA Indigenous Arts Leadership Program](#) supported by Wesfarmers, and [Desart](#) and [ANKA](#) arts worker courses. There is an opportunity for capacity building exchanges between regional and city organisations.

Digital capacity building for arts workers and art centres is needed, and opportunities for pathways into management and leadership positions. First Nations leadership programs should also include business administration training.

¹⁹ There is also an identified need for a strategic whole of sector response to the skills gap in off-stage roles in the performing arts. See Australia Council 2020, [Creating Art Part 1: The makers' view of pathways for First Nations theatre and dance](#).

Attachment A – First Nations thought leadership at the Australia Council

The discussion about a national body for First Nations arts and culture is part of a long history of First Nations thought leadership, cultural rights advocacy and investment at the Australia Council. The many people who have contributed to this work include (but are not limited to):

Chairs of the Aboriginal and Torres Strait Islander Arts Board²⁰ and First Nations Arts and Culture Strategy Panel²¹

Dick Roughsey (1973–76)	Richard Walley (1992–1996, 2000–04)
Wandjuk Marika (1976–80)	John Moriarty (1997–2000)
Larry Lanley (1980–81)	Chris Sarra (2005–08)
John ‘Sandy’ Atkinson (1981–83)	Mark Bin Barker (2009–12)
Chicka Dixon (1983–86)	Lee-Ann Tjunypa Buckskin (2012–14)
Robert Merritt (1986–89)	Wesley Enoch (2014–21)
Lin Onus (1989–1992)	Larissa Behrendt (2022–)

First Nations Directors and Executive Directors

Gary Foley (1984–87)	Lydia Miller (1994–1997, 2005–2021)
Gavin Andrews (1987–88)	Fay Nelson (1997–2000)
Chicka Dixon (acting 1988)	Cathy Craigie (2001–05)
Peter Brown (acting 1989)	Franchesca Cubillo (2021–)
Lesley Bangama Fogarty (1989–94)	

Members of the Aboriginal and Torres Strait Islander Arts Board (1973–2013)

Albert Barunga (1973–75)	Mudrooroo Narogin (1989–90)
Harold Blair (1973–75)	Justine Saunders (1989)
Ken Colbung (1973–76)	Fiona Foley (1990–92)
Kitty Dick (1973–76)	Cliff Watego (1990)
Wandjuk Marika (1973–75)	Maureen Watson (1990)
Chicka Dixon (1973)	Eve Fesl (1991–92)
Ruby Hammond (1973)	Steven Page (1991)
Eric Koo’oila (1973)	Charles Perkins (1991)
Tim Leura Jabaljari (1973)	Debra Pilot (1991–93)
Albert Lennon (1973–74)	Djon Scott-Mundine (1991–92)
Raphael Apuatimi (1973)	Roslyn Watson (1991)
Mick Miller (1973–75)	Lafe Charlton (1992–95, 2002–06)
Vai Stanton (1973–76)	Banduk Marika (1992, 95–99)
Terry Widders (1973–75)	Kaye Mundine (1992–95)
Samuel Ganaraj (1974)	Deborah Rose (1992–95)
Edward Koiko Mabo (1974–76)	Sonya Arnold (1993)
Bobby Ngajmirra (1974–77)	Ron Hurley (1993–96)
Jack Phillipus (1974–75)	Lydia Miller (1993–94)

²⁰ The Board was established as the ‘Aboriginal Arts Board’ in 1973, renamed the ‘Aboriginal and Torres Strait Islander Arts Committee’ in 1993, then re-established as the ‘Aboriginal and Torres Strait Islander Arts Board’ in 1994.

²¹ Following the *Australia Council Act 2013* and the dissolution of art form boards, the ‘Aboriginal and Torres Strait Islander Arts Strategy Panel’ was established as a subcommittee of the Australia Council Board in 2014. It was renamed the ‘First Nations Arts Strategy Panel’ in 2020 and the ‘First Nations Arts and Culture Strategy Panel’ in 2021.

Leila Rankine (1974–76)
 Walter Pukutiwara (1975–77)
 William Reid (1975–76)
 Billy Stockman (1975–77)
 Larry Lanley (1976–80)
 Wendy Feifar Nannup (1976–80)
 David Mowaljari (1976–78)
 Mary Duroux (1977–80)
 Val Power (1978–80)
 John ‘Sandy’ Atkinson (1978–79)
 Jimmy Stewart (1978–80)
 Jack Wunuwun (1978–80)
 Larry Jakamarra Nelson (1979–82)
 Betty Colbung (1981–82)
 George Kaddy (1981–82)
 Maurice Luther (1981–82)
 Claude Narjic (1981–82)
 Margaret Valadian (1981–82)
 Peter Woods (1981–82)
 Ephraim Bani (1983–87, 93–95)
 Colin Cook (1983–88)
 Jack Davis (1983–87)
 James Everett (1983–87, 89–90)
 Charles Godjuwa (1983–85)
 Albert Mullett (1983–86)
 Thancoupie (1983–85)
 Oodgeroo Nonnucal (1983–85)
 Peter Yu (1983–87)
 Lin Onus (1985–86, 88, 90–91)
 Nola James (1986–88)
 Paul Martin (1987–88)
 James Miller (1987–88)
 Geoff Narkle (1987–88)
 Jo Willmot (1987–89)
 Nora Bindal (1988)
 Kevin Cook (1989)
 Joseph Geia (1989–90)
 Januarrie (1989–91)
 Jonathan Brown Kumunjara (1989–90)
 Sally Morgan (1989)
 George Milpurru (1993–94)
 Kaye Mundine (1994–95)
 Brenda Croft (1995–96, 2004–08)
 Robyn Forester (1996–98)
 Vicki Matson-Green (1996–97)
 Ellen Jose (1997–98, 99)
 Pedro Stephen (1996–98)
 Terrence Coulthard (1996–99)
 Mark Bin Baker (1997–2003)
 Deborah Mailman (1997–2000)
 John Moriarty (1997–99)
 Leo Akee (1999–2001, 2009–12)
 Alana Garwood-Houng (1999–2001)
 Yvonne Kopper (1999–2001)
 Peter Bertani (2000–03)
 Lenore Dembski (2000–03)
 Ray Kelly (2000–04)
 Sandra Phillips (2001)
 Julie Gough (2002–03)
 Janina Harding (2002–06)
 Jennifer Martiniello (2002–06)
 Djambawa Marawili (2004)
 Anita Maynard (2004–06)
 Gina Rings (2004–08)
 Terry Marawili (2005–08)
 Chris Sarra (2005–08)
 Rosie Barkus (2007–08)
 Richard Frankland (2007–10)
 Tara June Winch (2007–10)
 Jeanette James (2007–13)
 Lynette Narkle (2009–11)
 Desmond ‘Kootji’ Raymond (2009–12)
 Lee-Ann Tjunypa Buckskin (2010–11)
 Melissa Lucashenko (2011–13)
 Rachel Maza (2011–13)
 Monica Stevens (2011–13)
 Lydia George (2013)
 Ben Graetz (2013)
 Charmaine Green (2013)

Members of the National Indigenous Arts Reference Group (2007–10)

Angela Hill
 Clotilde Bullen
 Darryl Danton Murgha
 Diat Alferink
 Ebony Williams
 Elizabeth Cavanagh
 Frederick Gesha
 Jeremy Geia
 Kylie Belling
 Lee-Ann Tjunypa Buckskin
 Leo Brian Akee
 Lisa Michl
 Liza-Mare Syron
 Lydia George
 Mitch Torres
 Nancy Bamaga
 Nici Cumpston
 Robynne Quiggin
 Tessa Rose
 Tracey-Lea Smith
 Trevor James
 Walter Saunders

Members of the First Nations Arts and Culture Strategy Panel (2014–)

Franchesca Cubillo (2014–17)	Patrick Mau (2018–20)
Michael Leslie (2014)	Major Sumner (2018–20)
Jeanette James (2014–17)	Christian Thompson (2020)
Tristan Shultz (2014–17)	Jared Thomas (2018–21)
Peter White (2014–17)	Marlene Chisholm (2020–22)
Terri Janke (2015–16)	Wayne Barker (2020–)
Nancy Bamaga (2017–2020)	Janina Harding (2020–)
Hetti Perkins (2017–19)	Nardi Simpson (2020–)
Sonia Smallacombe (2017–20)	Vicki West (2020)
Jason Eades (2017–21)	Sienna Stubbs (2021–22)
Stephen Page (2018)	Nathan Maynard (2022–)
Jody Broun (2018–19)	Troy Casey (2022–)

In addition, many more First Nations arts and cultural practitioners have served on the Australia Council's **First Nations artform sub-committees and peer assessment panels** over previous decades, which ensure the Australia Council's dedicated funding to First Nations people, groups and organisations through our grants program is assessed wholly by Aboriginal and Torres Strait Islander peer assessors.

The Australia Council recognises the importance of First Nations peoples' self-determination, cultural authority and leadership to our collective prosperity.