



Office for the Arts  
Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts  
Australian Government

22 August 2022

### **Re: A new National Cultural Policy**

NAVA welcomes the opportunity to contribute to this consultation for a new National Cultural Policy and encourages the government to institute a policy that fosters the arts and cultural sector ethically, strategically and ambitiously to benefit us all across Australia. This Policy is a starting point and should guide the more comprehensive development of a 10-year National Cultural Plan which will work across government portfolios to leverage and invest in the civic benefits of arts and cultural programs.

The National Association for the Visual Arts (NAVA) is an independent membership organisation which brings together the many voices of the visual arts, craft and design sector to improve the fundamental conditions of work and practice. We do this through advocacy, education and the Code of Practice. Our community is made up of over 50,000 Members, subscribers, friends and followers, consisting of artists, arts workers, arts organisations, and arts lovers.

Through the Code of Practice for the Visual Arts, Craft and Design we set out equitable, ethical and self-reflective standards for the professional Australian contemporary arts sector.

The Code covers good practice approaches to working relationships, ethical standards of access and inclusion, and rates of pay for visual artists, craft and design practitioners and arts workers within our sector which are currently not legislated or regulated under Australian law.

NAVA recently hosted five workshops centred on each of the five pillars of this consultation framework. These meetings were a chance for the visual arts, craft and design community to brainstorm, collaborate, and share ideas for arts policy. We are pleased to provide our submission after extensive conversations, consultation and collaboration with over 250 Members and subscribers. NAVA's submission first outlines our key recommendations for each pillar followed by an Appendix that explains the urgent context for our priorities.

# EXECUTIVE SUMMARY

## **Mandating payment standards necessary to sustain visual artists as workers**

NAVA wholeheartedly commends the Federal Government's commitment to recognising artists as workers and creators of culture. For the visual arts, craft and design sector, this must be supported by regular public endorsement and underpinned by legislative and industrial reform that recognises the intrinsic, social and economic value provided by visual artists to Australia's national identity and wellbeing.

The visual arts, craft and design sector is dynamic, diverse and multifaceted, but its lack of regulation and legislation, combined with increasingly precarious conditions makes work and practice unsustainable for many. Research reports have documented a steady decline in public funding for visual arts, craft and design, and a concomitant diminution of capacity of support infrastructure to cope, especially under the pressure of an increasing level of demand both from practitioners and audiences. The longitudinal studies by Professor David Throsby of the economic circumstances of arts practitioners over the last three decades indicate that the level of visual artists' and craft practitioners' incomes continues to drop significantly and that a substantial proportion of practitioners are earning below the poverty line.

Except for those working in public service jobs (e.g., state galleries and federal and state arts funding bodies) most arts workers in the visual arts, craft and design sector are also not protected by unions and the structure of Awards. This increasingly results in the drain of experienced art workers from the visual arts and craft industry and the subsequent loss of knowledge and skill in the sector.

The Australia Council's Schedule of Artist Loan Fees was first introduced in the early 1990s. Following a restructure in the mid-90s, the Australia Council no longer mandates payment of artists' fees or publishes a scale of fees. In its absence, NAVA developed an artists' payment schedule as part of its Code of Practice first released in 2001. While NAVA continues to have primary responsibility for setting payment standards for visual arts, craft and design practitioners, NAVA's work on this is supported by limited project funding.

Importantly, the principles outlined in the Code, including fees and wages for visual artists and arts workers, continue to be voluntary, not mandatory. Governments and their funding bodies do not mandate these fees and therefore NAVA is unable to enforce the payment of adequate fees for artists and freelance arts workers. This compares unfavourably with performing arts practitioners, who benefit from increased government funding when performers gain a wage increase through their Award process.

Though there may be a public perception that artists rely heavily on government grants and social security for their survival, artists have always supported themselves, often subsidising their art practice by taking on a great variety of paid work drawing on their arts skills and in other unrelated jobs. These gigs include work ranging from short-term employment, commissions, independent and grant supported projects, to selling artwork and specialist services, running a small business, and when necessary, taking on 'mutual obligation' work or training programs. By funding the costs of their art practice from largely self-generated income, artists themselves greatly subsidise the community cultural experience.

Simply, this is both unjust and unsustainable. Now is the time for the Federal Government to recognise visual arts, craft and design practitioners as workers and creators of culture by embedding industrial reforms in national policy.

NAVA's top priorities for inclusion in the new National Cultural Policy are:

- Establish an Award rate for the visual arts, craft and design sector that mandates the adequate payment of artists and arts workers for their work and includes standard entitlements (including superannuation for gig workers and portable long service leave) as recognised under the national workplace relations system.
- Implement policies and measures that recognise and mandate the rights of artists to receive:
  - artist fees for the commissioning of new works
  - loan or royalty fees for the display of existing artwork in exhibitions
  - licensing fees for the use of images of their artwork and design in publications and on products and merchandise
  - wages for the administrative work associated with their practice, ensuring the full costs of working as an artist are remunerated.

Please do not hesitate to contact us for any further information we can provide.

Sincerely,

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# FIRST NATIONS RECOMMENDATIONS

## [Self-determination and employment opportunities](#)

- Establish a national strategic approach to build First Nations visual arts and crafts employment and representation in middle-tier jobs, leadership roles, boards, and Aboriginal advisory groups in remote, regional and urban areas. This includes First Nations-led education, training, mentorship and skills development programs.
- Introduce and support targeted programs focused on creating and retaining First Nations employment. This includes supporting existing First Nations business and micro businesses.
- Increase the number of targeted First Nations arts worker and leadership roles in visual arts peak bodies, touring agencies and small-to-medium arts organisations Australia-wide, and across the arts sector more broadly. Prioritise and encourage cluster hiring, especially for larger organisations with greater capacity.

## [Organisation sustainability and capacity building](#)

- Boost Indigenous Visual Arts Industry Support (IVAIS) funding for Indigenous arts organisations (art centres, cultural centres, knowledge centres, language centres, Aboriginal museums, galleries and Keeping Places), peak bodies, and support agencies to provide appropriate support across all states and territories and all urban, regional and remote communities.
- Invest in First Nations-led infrastructure including local art and cultural centres, studios, small-to-medium arts organisations and galleries across all urban, regional and remote communities.
- Provide funding to enable First Nations-led organisations to take advantage of new prevalent market opportunities within Australia and abroad.
- Commit targeted financial support for independent self-determined First Nations artists and practitioners.
- Invest in First Nations-led education and training programs for visual artists and craftspeople.

## [Indigenous Cultural and Intellectual Property \(ICIP\)](#)

- Action legislative reform as recommended by the Fake Art Harms Culture campaign.
- Invest in the introduction of a consumer education strategy.

## [Cultural Safety and First Nations participation in arts and culture](#)

- Introduce programs to increase First Nations engagement with the visual arts and craft sector, especially for vulnerable First Nations people such as those coming in and out of incarceration.
- Ensure public investment is tied to equity and industry standards for First Nations people.
- Encourage and facilitate cultural safety and awareness training for galleries and arts organisations.
- Implement programs to support truth-telling in galleries and museums. This includes reviewing processes on collection and display of First Nations works and materials, decolonising dominant perspectives and introducing inquiry-based learning for visiting schools.
- Ensure public investment for projects that claim to be consulting and collaborating with Traditional Custodians is genuine and appropriate.

# A PLACE FOR EVERY STORY RECOMMENDATIONS

- Ensure the National Cultural Policy adopts a whole-of-ecology approach where policies and programs aimed at increasing diversity are embedded throughout the entire policy, rather than in a standalone pillar.
- Establish an industry-led Anti-Racism Strategy that is holistic and overarching to rectify inequitable outcomes for culturally and linguistically diverse people. This includes support for new and existing networks, organisations and infrastructure for culturally diverse creatives and communities.
- Invest in opportunities for artists and arts workers with disability to gain sustainable, reasonable employment opportunities or opportunities to earn income and to develop a career path. Increase the visibility of people with disability as leaders or in senior management positions across the arts sector.
- Gender-equity policies are established to ensure arts organisations and workplaces afford artists and employees of all gender identities the safety, security and dignity that they are entitled to under anti-discrimination law.
- Establish a Young People and Culture Framework to increase youth participation and engagement with arts and culture.
- Develop a framework around increasing access to education at all levels of school, university and TAFE, career and skills development, and professional practice so that everyone, everywhere can individually and collectively follow chosen pathways and careers. This must address barriers based on where people live, their financial situation or internet connection, and their ability to travel to another university or place of practice.

NAVA endorses the submission and recommendations from our colleagues at Diversity Arts Australia:

- Equity-tested public funding: Public funding opportunities should be distributed equitably, with extra support targeted at underrepresented communities.
- Targeted employment and material support for underrepresented people: Culturally and racially marginalised people must be given opportunities to be in decision-making positions and be provided employment pathways across all levels and career stages (including internships, traineeships, professional development and leadership programs).
- Accountability for diversity, equity and inclusion: Accountability mechanisms, such as regular public reporting against diversity data, should be embedded in public funding agreements to ensure racial equity, diversity and inclusion within their workforce; and stronger measures and accountabilities for large institutions to ensure their relevance and strengthen their sustainability.
- Self-determined research and language: Supporting research led by communities on the experiences of CaLD artists and creative workers in the sectors. The use of the terminology “culturally and linguistically diverse” to capture migrant experiences should be replaced by more relevant, self-determined ways of identifying our communities.

Further, NAVA endorses the submission from our colleagues at Regional Arts Australia, in which they recommend a Regional Strategic Framework: a place-based strategy designed to bring together industries and policy sectors to understand the diversity of a whole regional and creative ecology, and that advocates for creativity and artistic practice to be included in the development of National Regional Policy.

# THE CENTRALITY OF THE ARTIST RECOMMENDATIONS

## Industrial Reform

- Establish an Award rate for the visual arts, craft and design sector that mandates the adequate payment of artists and arts workers for their work and includes standard entitlements as recognised under the national workplace relations system.
- Implement policies and measures that recognise and mandate the rights of artists to receive:
  - artist fees for the commissioning of new works
  - loan or royalty fees for the display of existing artwork in exhibitions
  - licensing fees for the use of images of their artwork and design in publications and on products and merchandise
  - wages for the administrative work associated with their practice, ensuring the full costs of working as an artist are remunerated.
- Enable the Fair Work Commission powers to set minimum standards for artists and art workers, and the scope and flexibility needed to deal with 'employee-like' forms of work.
- Extend the small claims jurisdiction in the Fair Work Division of the Court to assist artists to resolve disputes without recourse to costly legal proceedings.
- Introduce or trial a basic income scheme for artists and arts workers to address the financial instability caused by intermittent, periodic and project-based nature of working in the arts.
- Work with Centrelink to introduce income averaging processes for artists, similar to the Australian Taxation Office (ATO) Tax Ruling: carrying on business as a professional artist (TR 2005/1). This will ensure that fees or grants received will not be treated by Centrelink as income that contributes to living expenses (thus jeopardising JobSeeker payments).
- Ensure Centrelink recognises the professional work of artists and arts workers as employment-seeking activities.

## Superannuation

- Amend the Superannuation Guarantee (Administration) Act 1992 (Cth) to replace the word "display" with "exhibition" in Section 12(8)(a), expanding definitions to include visual artists, craft and design practitioners. Delete Paragraph 84 of SGR 2005/1 which rules that a painter does not perform or present an exhibition.
- Expand the factors that deem a contractor an employee for superannuation purposes to include the work of visual artists, craft practitioners and arts workers.
- Reverse the self-managed super fund (SMSF) changes that have devastated the market. This will discourage investors from putting artworks in storage.

## Taxation

- Make art prize winnings, fellowships and government grants tax exempt.
- Extend the instant asset write-off threshold and enhance tax incentives and buy art schemes to promote the purchase of work by living Australian arts and crafts practitioners.
- Increase the benefit received by artists who donate directly to the Cultural Gifts Program.

### Creation of new artwork

- Raise the allocation for arm's length peer-assessed arts funding for independent practitioners through the Australia Council.
- Add 300 new 3-year Creative Fellowships through the Australia Council awarded annually (900 fellows funded across three-year funding cycles).
- Ensure public funding is contingent on the payment of visual artists at or above minimum standard rates as set out in NAVA's Code of Practice, and that funding levels are adequate to support those payments.

### Data collection

- Introduce additional questions to the Census under Income and Work and Unpaid Work to gather data on creative practice, hours worked, and creative and cultural output, capturing more than just the one professional activity.
- Conduct a Productivity Commission review or industry mapping to improve our understanding of the full scope and scale of the arts and culture sector. Consult with the sector to guide the composition of Australian Bureau of Statistics (ABS) data sets that inform the Cultural and Creative Satellite Accounts annually, gather and publish data on levels and type of employment, trends, revenue, geographic trends across the creative and cultural industries and harmonise these where possible with international approaches to facilitate global benchmarking.

## STRONG INSTITUTIONS RECOMMENDATIONS

### Industrial reform

- Establish an Award rate for the visual arts, craft and design sector that mandates the adequate payment of arts workers and includes standard entitlements including superannuation for gig workers and portable long service leave as recognised under the national workplace relations system.

### Sustainable institutions

- Permanently double the Australia Council's budget or at a minimum restore funds to 2013 levels with adjustments for inflation.
- Raise the allocation for arm's length peer-assessed arts funding for at least 200 small-to-medium organisations through the Australia Council.
- Establish a federally backed National Exhibitions and Events Business Insurance fund to provide direct support in response to the Covid-19 pandemic, natural disasters and other crises to artists, sole traders, venues and small-to-medium organisations, inclusive of the visual arts sector.
- Develop a Crisis and Disaster Recovery Fund for direct, targeted income support that is eligible for the visual arts, craft and design sector. All support packages must be equity-tested to ensure they support the most marginalised people.
- Extend recognition of "responsible persons" to include artists who are approved members of their professional association, such as NAVA, for board appointments on Deductible gift recipients (DGR) registered organisations.

### Peak bodies and service organisations

- Permanently increase funding for existing peak bodies, support agencies and service organisations to expand professional development programs for artists and arts workers.

### Education and training institutions

- Support universities and TAFEs to expand delivery of professional practice units for all arts students.
- Introduce paid traineeships to address critical skills shortages in the visual arts, craft and design.
- Establish a Trade Course to boost the number of qualified production and technical staff in the visual arts, craft and design that recognises a mix of skills including art handling, museum practices, lighting, white card, rigging, AV, carpentry, sewing, painting and plastering.
- Work with ACARA and state governments to ensure the key artforms (dance, drama, media arts, music, visual arts and design) are core and mandatory in the national curriculum for all children at all levels, and that secondary schools are properly resourced with specialist arts teachers and support the next phase of the new Australian Curriculum 9.0.
- Invest in First Nations-led education, training, mentorship and skills development programs to support First Nations employment and representation in middle-tier jobs, leadership roles, boards, and Aboriginal advisory groups.
- Increase funding for arts education across schools through existing Commonwealth-state schools funding agreements.
- Ensure artists are engaged by the education department respectfully and are offered fair contracts.
- Invest in university funding for creative courses, reduce tuition fees for arts subjects, and remove Ministerial discretion from approving or rejecting research grants recommended and administered by the Australian Research Council (ARC).
- Introduce policies and programs that increase access and participation for people from historically marginalised backgrounds to professional pathways.
- Work with education institutions to ensure arts literacy is embedded in learning content.

## REACHING THE AUDIENCE RECOMMENDATIONS

### Digital opportunities

- Introduce programs and policies that support the professional presentation of Australian artists, artworks and exhibitions in the digital space, ensuring artists' copyright is protected and that they receive ongoing publishing fees for their content.
- Boost funding to the Community Heritage Grants (CHG) program to properly digitise collections and license images of artwork for sharing on Trove.
- Address NBN blackspots.

### Art tourism

- Extend Visions of Australia, the regional exhibition touring program, to include an international touring program for reaching a global audience.
- Invest in the development, delivery and promotion of new and existing arts trails to attract local visitors and tourists.

## Venues and spaces

- Enhance and introduce commercial lease subsidies, tax incentives for landlords, and planning reform to support pop-up spaces and small galleries for visual artists and craft/design practitioners to show work and reach new audiences.
- Planning reform to encourage local councils, local authorities and property owners to support affordable live / work spaces for artists as well as presentation spaces such as galleries, across existing empty spaces and buildings as well as new developments.
- Ensure the development of new arts spaces are accessible and culturally safe and introduce programs to help existing facilities become accessible and culturally safe.

## OTHER THINGS THAT WE WOULD LIKE TO SEE IN NATIONAL CULTURAL POLICY?

- Adopt in full the recommendations from Sculpting a National Cultural Plan: Igniting a post-COVID economy for the arts, the final report from the recent bipartisan Parliamentary Inquiry into Australia's Creative and Cultural Industries and Institutions.
- Re-establish the National Arts and Culture Accord to facilitate cooperation between three levels of government.
- Responses from the sector through this consultation process should guide a comprehensive development of a ten-year National Cultural Plan. Such a Plan, working across portfolios to leverage and invest in arts and cultural programs, will truly serve the sector and the community and has had proven success in other sectors such as sport.

# Appendix

## FIRST NATIONS

### [Self-determination and employment opportunities](#)

The Aboriginal and Torres Strait Islander arts sector was not included as an area of focus under the National Roadmap for Indigenous Skills, Jobs and Wealth Creation. There is currently no strategic approach at the national level to build the pipeline of First Nations visual arts and crafts workers — and leaders — in remote, regional and urban areas.

The agency of the Aboriginal and Torres Strait Islander visual arts, craft and design sector requires strong investment in First Nations mid-career and leadership roles. While there has been a recent increase in First Nations people in leadership roles and young people upskilling through leadership courses, there is currently a whole missing tier of qualified First Nations people in the middle. Employment opportunities need to be strengthened through the development of consistent training in order to build the capability of people to fill these roles. Access to networking, peer-to-peer learning, as well as the development of curatorial thinking is critical. Support must also extend to skills training for artists and arts workers to represent First Nations communities on boards and Aboriginal advisory groups.

### [Organisation sustainability and capacity building](#)

As revealed in the recent Productivity Commission's Aboriginal and Torres Strait Islander Visual Arts and Crafts draft report, total funding through the Indigenous Visual Arts Industry Support (IVAIS) program has declined in real terms by 5% since 2015–16. The average funding for art centres — the main recipients of government support — has fallen by 6.3% as the number of art centres has increased while funding under the program has remained fixed. Since 2016-17, funding to the Aboriginal and Torres Strait Islander Arts Program under the Australia Council has also fallen in real terms by 5%.

Almost every state and territory has plans to build a First Nations gallery or cultural centre. The drive for content for these institutions will increase pressure on First Nations visual arts and craft practitioners and Indigenous art centres that have not had an increase in funding for some time.

New market opportunities are now more prevalent than ever before. Additional funding is urgently required to adequately resource art centres, cultural centres, knowledge centres, language centres, Aboriginal museums, galleries and Keeping Places to access these opportunities. Channels for online sales mean there is opportunity to reach new markets within Australia and abroad. There has been a substantial increase in the amount of First Nations artists work appearing on products. Art centres need a boost in funding to enable them to take advantage of these market opportunities.

### [Indigenous Cultural and Intellectual Property \(ICIP\)](#)

NAVA supports the Productivity Commission's recommendation for an Indigenous Cultural and Intellectual Property (ICIP) strategy that sets out how policy and regulatory measures will address different aspects of ICIP and introduces a new cultural rights legislation to recognise and protect cultural assets in relation to visual arts and crafts. The Productivity Commission's draft report notes that ICIP is sometimes used without the permission (or authorisation) of Traditional Custodians, in the wrong context, and without

economic benefits flowing back to Aboriginal and Torres Strait Islander people and communities. This commonly occurs when inauthentic visual arts and crafts are produced.

The report acknowledges that fake Indigenous art and products are a pervasive and longstanding problem. They disrespect and misrepresent culture and by misleading consumers and denting confidence in the market, they deprive Aboriginal and Torres Strait Islander artists of income. The Productivity Commission notes that inauthentic products accounted for well over half of spending on Aboriginal and Torres Strait Islander souvenirs in 2019-20.

NAVA raised concerns in its submission to the study regarding stylistic and conceptual appropriation of Aboriginal and Torres Strait Islander art and designs, which result in both cultural and economic harms. Our submission also noted that some non-Indigenous artists, craft practitioners and designers appropriate Aboriginal styles and sell this work commercially and/or win art prizes, benefiting financially at the expense of Aboriginal artists.

## A PLACE FOR EVERY STORY

### Access Rights

NAVA advocates for good practice policies and procedures ensuring inclusion and participation for d/Deaf and disabled people across all aspects and operations of visual arts, craft and design – as creatives, arts workers, administrators, and audiences.

NAVA endorses the submission from our colleagues at Arts Access Australia in which they recommend that National Cultural Policy address the barriers to visual arts and craft organisations employing more d/Deaf and disabled people, as well as providing pathways for d/Deaf and disabled people and having d/Deaf and disabled people more visible both within leadership, programming, curation and administration.

### Gender Equity

While women, trans, non-binary and gender diverse artists now generally share the same legal rights and have access to the same opportunities as their cisgender male counterparts, they are still underrepresented in certain areas across the art sector. Women arts workers have historically been well represented in positions of arts administration but continue to be significantly underrepresented in such positions of leadership.

As in many other industries, women artists often earn less than their male counterparts. This is for several reasons, including there being insufficient material support and professional development opportunities for artist mothers and parents of children, for instance family-friendly residency programs. In addition to broader social prejudices, stereotypes, and biases, other barriers include the lack of parental leave for casual and often part-time arts workers, insufficient childcare for working parents, and age restrictions on opportunities such as awards and residencies that may exclude artists whose careers have been interrupted by having and caring for children. These factors can make a sustained artist practice difficult while bearing and raising children.

Given the art world has historically accounted for gender in binary terms, there is much to be done to ensure the sector is accessible to artists and artworkers who are not cisgender and may identify as trans/transgender, genderqueer, non-binary, brotherboys, sistergirls and other experiences of gender identification.

Gender-equity policies are strategic documents that outline measures, policies, and targets an organisation has put in place to promote gender equity.

### Young People and Culture Framework

NAVA endorses the submission and recommendations from our colleagues at Theatre Network Australia (TNA) in which they note that children and young people make up almost a third of Australia's population. Young people's engagement in arts and culture is a public good that requires a government framework to support long-term investment and outcomes.

A federal grants program to allow schools to engage artists and arts organisations (using the Sporting Schools model) could include strategies to resource youth arts organisations and artists and connect them with schools to provide quality arts programs and professional learning for staff.

The new Australian Curriculum 9.0 which was released in May 2022 is ambitious and exciting, offering a good direction for the visual arts. Yet investment is needed to prepare teachers to deliver it with the pedagogies and resources that are required. It urgently needs to be taken into the next phase.

Featuring a lot in the new Australian Curriculum for young people in the arts, is also a global context. Investing in this will support Australia's future into a global market. This is something that young people are already well and truly thinking about.

Develop a framework around access to education at all levels of school, university and TAFE, career and skills development, and professional practice so that everyone, everywhere can individually and collectively follow chosen pathways and careers. This must address barriers based on where people live, their financial situation or internet connection, and their ability to travel to another university or place of practice.

## THE CENTRALITY OF THE ARTIST

### Industrial Reform

Further to the executive summary in this submission, there are ongoing inequities for visual arts, craft practitioners and designers resulting from the lack of adequate definitions of "artist" and "artwork" in the rules that govern industrial relations and work conditions. The arts sector has particular characteristics and modes of practice which are different from, but have equal legitimacy, to other industry sectors.

A UNESCO recommendation for the Status of the Artist to be recognised through legislation has not been taken up in Australia despite continuing lobbying by the sector itself. Status of the Artist is the recognition by society of the moral, economic and social rights, with particular reference to income and social security, which artists should enjoy.

The legislation could use arts industry criteria as elaborated in the 2005 public income tax ruling: carrying on a business as a professional artist, as the basis for defining professionalism. Thus, the work of professional visual arts, craft and design practitioners will be clearly distinguishable from the activities of hobbyists.

This could then be used as the reference point for all other legislation and regulation which impacts on visual artists and craftworkers' professional lives, including a living wage, other areas of taxation, rights (including copyright, resale royalties, freedom of expression and anti-discrimination regulations), Indigenous protocols, benefits and entitlements, superannuation, insurance, social security, grants and other forms of public and private sector income support.

Any changes to legislated arts, craft and design practitioners must also be supported and reinforced through an extensive national educational campaign aimed at both practitioners and the users of their goods and services.

### Superannuation

Like other working people, artists and other art professionals need superannuation to have some retirement income. There is general confusion in the visual arts sector about superannuation for artists working in galleries or other arts organisations in various capacities. Some galleries make super contributions for artists and contracted arts workers, while others don't. Some galleries and arts organisations are not aware that some contractors are deemed employees for superannuation purposes. For visual artists presenting an exhibition, the question of super contributions on the artist fee they receive for the commissioning or loan of their work is confusing.

Section 12(8)(a) of the [Superannuation Guarantee \(Administration\) Act 1992](#) (Cth), extends the concept of employee to include:

“a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills”.

In paragraph 84 of [SGR 2005/1](#) it is ruled that a painter does not perform or present an exhibition. However visual artists are likely to be included within the meaning of section 12(8)(a) in limited circumstances. For instance, a visual artist who actively participates in a performance or a presentation (e.g. by giving a live exhibition of their artistic skill) would potentially be an employee for superannuation purposes under this provision. Additionally, a visual artist engaged in the preparation of materials used in a performance or a presentation could also potentially count as an employee under section 12(8)(b) (e.g. a visual artist preparing the sets for a theatrical performance would be in the same legal relation to that performance as a playwright producing a script - see paragraph 87 of [SGR 2005/1](#)).

As mentioned, the ATO has given a ruling that a painter does not “perform or present” an exhibition. The same is probably true of most exhibitions. However, visual artists who work with performance-based practices are in a different position. If a performance artist is someone who uses their artistic skill in a live setting before an audience, then their performance would fall within the operation of [section 12\(8\)\(a\)](#), meaning they would be considered as employees for the purposes of the Act.

Similarly, some media artists will also be deemed employees for superannuation purposes. Section 12(8)(c) is engaged where a person is artistically or otherwise involved in the creation of three forms of physical media (film, tape or disk) that record a performance or in the broadcasting of a performance across two forms of communication (television and radio). A video artist who was paid to make a film would also likely come within section 12(8)(c) even if their work was only displayed in a gallery and not broadcast to the public because they were paid to perform services in, or in connection with, the making of a film.

Many kinds of visual artists (those involved in, for instance, producing ceramics, drawing, painting, sculpture, printmaking, design, crafts, photography, etc) would not ordinarily come within section 12(8)(c) unless they are recorded working in their studio or similar, as this would be considered a live performance of their artistic skill.

Meanwhile, the 2011 changes to self-managed super funds (SMSFs) caused significant disruption and uncertainty to many artists. In the twelve months following the changes, the commercial art market was decimated, and artists' careers suffered – with First Nations artists disproportionately impacted. Many commercial galleries in Perth and Adelaide closed and the market suffered a \$200 million loss in that year. No strategy was put in place to deal with the direct impact this had on artists and communities, and the impact continues to be felt today.

### Taxation

The instant asset write-off threshold was extended during the pandemic. An asset which is subject to depreciation is one that is expected to contribute to the production of income, such as a kiln to produce ceramic works that can be sold, a camera can be used to produce photographs for sale, or document paintings prior to sale, a car can take you to business appointments and so on. The ATO also considers that in an office environment, painting displayed in the reception area or foyer, or client meeting rooms, might be part of the décor which encourages clientele, and hopefully income. Art is classified by the ATO as an asset subject to depreciation so is therefore entitled to be treated as an immediate write-off asset. This scheme therefore assists artists buying equipment for their practice as a small business, as well as encourages other businesses to buy their work. This tax deductibility scheme should not only be continued but should be more widely advertised to businesses and organisations. Furthermore, increasing the tax-deductible amount would lead to an increase in large scale businesses purchasing art and subsequently expanding the marketplace in which money is spent on art in Australia.

While art prize money donors receive a tax concession, artists carry a tax burden. Generally, receipts of prizes and awards by artists are subject to income tax. This is because section 6-5 of the Income Tax Assessment Act 1997 (ITAA1997) renders income according to ordinary concepts assessable.

The Archibald Prize, for example, is a major art prize for the best portrait, preferentially of someone distinguished in art, letters, science or politics, painted by an artist resident in Australia. The winning artist receives \$100,000 from a total prize pool of \$200,000. Archibald Prize winnings are taxed as ordinary income.

By comparison, the Prime Minister's Literary Awards were introduced as an initiative to celebrate the contribution of Australian literature to the nation's cultural and intellectual life. These awards are held annually and currently provide a prize of \$80,000 in each of its four categories. They are specifically exempt from income tax under section 51-60 of the ITAA1997.

Meanwhile, guidance from the ATO suggests that winners of game shows need only declare prizes where regular appearance fees or winnings are received. Compared to winning an artistic prize, game show winnings are less dependent on skill and more random in nature. Nevertheless, attaining a prestigious prize like the Archibald has often been described as a once in a rare, lifetime opportunity for the successful artist. In its rarity, it is arguably similar to game show winnings, yet artistic prizes and awards continue to be classified as ordinary income.

There is inconsistency in the current income tax regime as it applies to artists compared to other prize winners and/or income earners.

### Creation of new artwork

A substantial increase by federal and state/territory governments is needed in the number of artist/craft practitioner fellowships given, at a level which provides a living allowance. Fellowships address the 'mid-career desert' where there are fewer existing opportunities for visual arts, craft and design practitioners. They provide the artist with the security to explore the next major developmental step in their practice and seek opportunities to enhance their reputations, build professional relationships and consolidate their careers.

Mid-career artists find it increasingly difficult to extend their practice and take necessary risks and make time for skills development and experimentation. Fellowships give artists support at a crucial time in their development.

### Data collection

In 2014, the ABS ended its contribution to collecting culture, sport and recreation statistics following budget cuts. The recent creative and cultural industries figures reported by the Australian Government Bureau of Communications and Arts Research omit significant elements of the visual arts, craft and design economy including the creation, exhibition and sale of contemporary art in public and commercial galleries, the secondary market of sales at auctions or through dealers, and the work of all Aboriginal Art Centres. The economic contribution of Australia's painters, sculptors, photographers, public artists and so many other contemporary practices has not been considered at all. The full size and scope of Australia's arts and cultural industry is currently unknown.

## STRONG INSTITUTIONS

The visual arts, craft and design sector is an interconnected arts ecology which supports the work of artists and brings their work to audiences, participants and buyers. This infrastructure includes public and private funding bodies, education institutions and groups, public and private galleries and other presenting institutions of all types and scales, major events like biennales and art fairs, art and craft centres, auction houses, retailers and shops, agents and brokers, and a great variety of other service providers, peak bodies and networks.

Currently, Australia is lacking a strategic national overview and the coordination to facilitate the growth of a network of appropriate infrastructure organisations around the country. As discussed regularly during the hearings of the Senate Inquiry into the funding cuts since 2013, the relationship between all parts of the arts ecology needs to be better understood and nurtured.

### Sustainable institutions

The visual arts, craft and design sector is undoubtedly in crisis and 'recovery' seems a long way off. Following more than six years of debilitating policy shifts and funding cuts to the arts, the sector was hit by the pandemic, already tired and under-resourced. Australian artists, arts workers and galleries were significantly impacted by lockdowns across the country with their exhibitions, tours and commissions cancelled. The Covid-19 pandemic continues to impact the number of active artists producing artworks and together with the loss of tourism traffic, artwork sales have been hit hard. Escalating coronavirus outbreaks and heavy floods are currently having a devastating impact.

A visual arts and craft sector survey undertaken by NAVA in early 2022 revealed that a majority of Australian visual artists and arts workers are deeply concerned by income security, program cancellations and reduced sales due to ongoing impacts of the pandemic and recent flooding.

Events such as the COVID pandemic and extreme weather linked to climate change have impacted on both risk management requirements and the cost of insurance. Insurance against disasters can be prohibitively expensive for visual artists and arts organisations, especially those living and/or working in at-risk zones. Also, insurance policies won't cover all situations and a pay out of funds will not be immediate.

Emerging areas of risk such as internet security, work cancellations and workplace health and safety compliance mean that emergency response and disaster preparedness is an evolving space.

A Crisis and Disaster Recovery Fund inclusive of the visual arts, craft and design sector will ensure galleries and organisations can respond to emergencies like flood, storm and fire, as well as threats such as disease, climate shocks, environmental breakdown, digital threats, malicious damage and workplace health and safety without drawing funds away from their ongoing work.

Likewise, a federally backed national insurance scheme will help the visual arts sector shoulder some of the unexpected costs incurred by business interruptions due to crises, such as putting artworks into storage, conservation following flood or fire damage and rerouting travelling exhibitions interstate and internationally. Galleries will be able to program with improved confidence knowing that when an exhibition or event must be cancelled, they will have the capacity to honour payment commitments to artists and arts workers. This will optimise job opportunities in the visual arts and ensure payments to artists are guaranteed regardless of any cancellations.

Without insurance, galleries are currently apprehensive about contracting artists for new work commissions in fear that the event or exhibition may be cancelled or postponed. As a result, many galleries are turning to collection-based exhibitions. This forces more experienced and high-profile artists to compete with those earlier in their careers for the

limited number of opportunities to create new work, pushing everyone down the career ladder.

### Education and training institutions

Due to ongoing education funding cuts, arts education, once considered part of the core curriculum in public schooling, has been gutted from school programs. The Australia Institute notes that 'no longer every child's right, an arts education is increasingly an extra-curricular activity reserved for higher-income families and private schools.' Together with billions lost from Australian universities since the start of the pandemic, the Higher Education Support Amendment Bill 2020 made it significantly more challenging and more expensive for people to study the arts at university. Many universities amalgamated arts courses or closed them altogether. Budget 2021-22 also saw large funding cuts to public universities, with the higher education sector slated for approximately \$1 billion in funding cuts to 2024. While not directly targeted at the arts and cultural sector, these cuts will harm Australian arts education in an already reeling university sector that has suffered significant revenue declines and job losses because of the pandemic.

This is despite the Government's own statistical research that demonstrates that arts and humanities graduates are more employable than science and mathematics graduates. The Australian Government's Bureau of Communications and Arts Research 2019 research report, *Creative Skills for the Future Economy*, reinforced the importance of creative skills for future economic outcomes. The report, which analysed the skills and qualifications of people working in creative fields and how these may be used in the future, showed that businesses rely on \$87 billion worth of creative industry input for success, a figure that is growing rapidly. Creative skills, including original thought and innovation, are particularly sought-after and are likely to face even higher demand in the future workforce.

NAVA supports the call from Live Performance Australia for the introduction of traineeships and trades to address critical skills shortages across the visual arts, craft and design. Like the performing arts, shortages in technical and production staff in the visual arts, craft and design are at critical levels. Long-term under-investment combined with the impacts of the pandemic have caused significant shortages of available arts workers with a mix of skills including art handling, museum practices, lighting, white card, rigging, AV, carpentry, sewing, painting and plastering.

### Service organisations

Industry service organisations, such as NAVA, offer a range of services tailored to meet the needs of their art form and address broader industry priorities. Services include professional development resources and training for artists, board members and staff, advocacy, business management and marketing assistance. As well as this, service organisations provide advice to governments, and are a valuable link between governments and the industry.

In 2014, NAVA celebrated the Australia Council's adoption of appropriate and different criteria for assessing service organisations as part of the six-year funding process. Following the 2015 federal budget announcement of cuts to the Australia Council's funding, this commitment vanished as part of the change to four-year funding. Service organisations which often work behind the scenes to support the sector now compete



against the more public producing and presenting organisations for the same small pool of funds. The impact of reduced funding to service organisations leads to declines in the capacity and economic sustainability of the rest of the sector.

Significant funding increases that promote and foster the full richness and diversity of the arts ecology must prioritise the strengthening of support for working artists, smaller cultural organisations, First Nations' cultural organisations and service organisations.

## REACHING THE AUDIENCE

### Digital opportunities

Virtual art and cultural experiences have expanded access and opportunities for artists and audiences in many new ways. However, a lack of alternative delivery modes, infrastructure, training and policy on access, innovation, and the digital environment, means that a significant number of people are excluded from participating and experiencing visual content. Those without access to technical equipment, reliable internet access and digital literacy are disproportionately artists living in remote and regional areas, culturally and linguistically diverse communities, and artists living with disability across the entire sector. In addition, the move online has led to new breaches of artists' IP rights and best practice standards such as a lack of closed captioning, audio description, transcripts of recordings or the use of alt-text and image descriptions.

For artists and organisations who are new to publishing or creating for the online realm, issues around intellectual property, including moral rights and copyright, are often overlooked. These issues are heightened for First Nations practitioners, who are more likely to make works within a cultural landscape imbued with legacy, responsibility and sacred or ancient skills.

Digital adaptation poses unique challenges for First Nations arts, including the need to uphold Indigenous rights and sovereignty in the digital environment and to protect against unethical dealing and digital disadvantage.

### Art tourism

NAVA supports the call from Contemporary Art Organisations Australia (CAOA) submission to this consultation which recognises that for artists to have sustainable careers they require global audiences in addition to local markets. Currently Australian visual arts, craft and design practitioners are unable to participate in key international opportunities due to inadequate funding, inflexibility and a shift away from international engagement by funding bodies. Renewed investment in the international arena is needed so that visual arts, craft and design practitioners and organisations can share Australian stories with audiences around the world. Opportunities such as residencies, participation in biennales, exhibitions, art fairs, festivals and live art are critical in growing interest in Australian practitioners and building commercial markets through the acquisition and representation of contemporary Australian artists.

Through investment in international commissioning, reciprocal and bilateral partnership, research and professional development, we can support visual arts, craft and design practitioners throughout their careers, thereby cultivating mature local, national and

international ecologies and economies, which enable artists to profit from these expanded opportunities.

### Venues and spaces

Various institutions offer free or subsidised residencies for a finite period. A few weeks, months or in some cases, a full year. Often these spaces select visual artists in residents based on an application and an outline of the proposed project/s.

An artist residency generally connects visual artists and craft and design practitioners with spaces and organisations away from their usual living and working environment. Residency opportunities allow visual artists to focus on a specific project or aim for a limited period. While these types of short-term arrangements are important and invaluable to the development of a visual artists practice, they are by their nature, short-term.

As it is quite costly and disruptive to your work to have to keep moving, many visual artists tire from migrating studio spaces and seek out a more stable commercially leased space to undertake work. Generally, visual artists will establish a new collective to set up a new space together and share costs, or join an existing collective or group, or be lucky enough to secure space run by an organisation.

The downside to commercial leases is that they are generally expensive, and Workplace Health & Safety, Public Liability, Insurance and Council compliances need to be met. The outlay to set up a compliant studio in a commercial lease is about \$25-30K minimum.

The Australia Council's research report 'Making Art Work' revealed that about 61% of visual artists make less than \$10,000 per year from their creative work. At the other end of the income scale, only 11% of visual artists made more than \$50,000 in the financial year 2014-2015. This does not paint a good picture for the practicality for many professional artists to establish a studio with a commercial lease, particularly in urban areas where costs are high.

One of NAVA's policy recommendations is the provision of affordable live / work spaces for visual arts, craft and design practitioners. This recommendation also flags the need for affordable housing for visual artists. Investment in space for visual artists to create and show their work locally won't work if we don't also invest in keeping them here.

A percent for art space scheme whereby in every major development, a proportion of space is allocated for artists' subsidised working and living space, is similar to Section 94 of the Environmental Planning and Assessment Act 1979 (NSW) which generates some social benefit from development – such as public amenities or public services.

## PRECEDENTS

### New York City

Westbeth Artists' Housing was conceived in the 1960's as a partial solution to the acute need to provide affordable housing and studios for artists and their families. In so doing, it became one of the first examples of adaptive reuse of industrial buildings for artistic and residential use in the United States.

Opened in 1970, Located in NYC in Manhattan's Far West Village, it is a complex of 13 buildings, 384 live-work spaces for artists of all disciplines and their families. In 2011 it was designated a NYC landmark.

In 2015, the New York City Mayor announced a plan to provide 1,500 units of affordable housing to artists and musicians by 2026.

### Baltimore

In the mid-1980's a small group of artists, city planners and members of the community in Baltimore created Artists' Housing Incorporated. The cooperative was officially opened in 1987 providing affordable housing for artists. It is centrally based and still in operation offering both rented studios in former warehouses, residency programs and government funded artists' apartments.

In 2012, the Baltimore Arts Realty Corporation (BARCO) was established to create working spaces for artists, performers, makers and artisans. It develops, owns and manages spaces tailored to the needs of artists and creatives that are affordable and secure for the long-term. To date, BARCO has leveraged more than \$19 million in investment to create 60,000 square feet of space for artists, makers and performers in Baltimore's Station North Arts & Entertainment District including Open Works and the Motor House.

### City of Seattle

The Office of Housing partnered with Artspace Projects, Inc. and Delridge Neighborhoods Development Association, to build affordable housing designed to meet the needs of artists. The Seattle Housing Levy has funded three apartment buildings with units affordable and designed for working artists. In addition to these buildings designed specifically with artists' needs in mind, painters, musicians, filmmakers and other working artists have found homes in other Seattle Housing Levy-funded apartments around the city.

### Boston City

Since 2002, Artist Live/Work Boston has helped create and retain spaces for artists in the city in recognition that artists drive a vibrant ecosystem of festivals, public art, galleries, performance spaces, not-for-profits, youth arts programs, and pop-up retail. Artists also function as small businesses by providing creative economy jobs and services for Boston residents. The work and endeavours of local artists dramatically enhance the quality of neighbourhoods for both the people who live there and people who visit. The initiative is a collaboration with other city agencies including the Mayor's Office of Arts and Culture, the Boston Planning & Development Agency, and the Department of Neighborhood Development.

### Minneapolis

The A-Mill Artists' Lofts opened in Minneapolis in 2015. One of only four national historic landmarks in the city, the former Pillsbury (flour) Mill was converted into a 251-unit apartment building at an estimated cost of \$156 million.