## **Notes from the fourth NSW Aboriginal visual arts practitioners to be heard at the workshop:** How do we protect the NSW Aboriginal visual arts sector? (Legal Protection)

11am - 12pm AEDT, Thursday 10 December 2020

**Introduction**

This is the final of four workshops that NAVA and Create NSW have hosted in collaboration to help boost the submissions specifically from the NSW First Nations arts sector before next Friday's deadline on the 18 December.

There are numerous ways to contribute to the inquiry including: writing a submission as an individual or teaming up with friends or your colleagues or entirely organisation, and the survey option, which might be a little bit more comfortable as well.

It is important for NSW practitioners and South-East mob to be heard on this platform for a number of reasons. Without an existing NSW peak body for First Nations arts unlike other states and territories, the NSW arts sector risks being under represented during this consultation which is why these workshops have been implemented. Together we can ensure the voices of stakeholders across New South Wales Aboriginal visual arts sector are highly visible and part of this national conversation about Indigenous arts.

The focus of this workshop is specifically around how we protect the NSW Aboriginal visual arts sector from a legal perspective, and this is the final of the four themes in the government's consultation paper.

**Legal protections**

Charisma Cubillo, Larrakia Lawyer at Terri Janke and Company, an Indigenous-owned law firm which has been operating since 2000 spoke about the evident holes in the Copyright Act and Trademark Act that don’t always protect Indigenous people and their work in the arts sector. In particular, she identified that the protection for copyright is only valid for 70 years past the death of the owner, which doesn’t apply to a lot of Indigenous practitioners whose work is ongoing and timeless.

She went on to discuss that the majority of works in the public domain are not protected, an example she used was rock art, which is not protected under copyright law. Protocols and contracts are often used to navigate these types of situations.

Charisma discussed that development of these laws to better protect artists has been unfortunately quite slow, but people are becoming more educated about the issues and that has had impact. The best way to address this issue is to use protocols and contracts, and make sure you are getting legal advice around contracts and your rights. Running workshops is another effective way to educate artists about their rights with intellectual property and ICIP.

**Telling your story**

Bibi Barba, Woka Woka, Cammeraygal and Gadigal and Yuin (salt water woman) is an artist who has been painting for 35 years professionally and is currently studying law at the University of Technology Sydney. She also currently works alongside Peter White in the Aboriginal strategy and community engagement, and her role is to create a voice and platform for the NSW visual arts sector, and to engage with the world international copy organisation, part of the Indigenous common law.

Bibi reflected on her own case of having her artwork appropriated by a commercial hotel overseas and reiterated the importance of prior informed consent before using an Indigenous artist’s artwork, and not to take anything without first gaining this permission. There are stories linked to these creative outputs, that have sustained the Indigenous community for tens of thousands of years. Bibi stated that this is a universal problem and can be seen by different cultures around the world having their culture appropriated without consultation or engagement with the community. This raises questions about how artists need to protect themselves both domestically and internationally. Collaboration is wonderful because if done properly, it can benefit the community. In an environment where people think it is okay to take, it is increasingly important for artists to protect themselves, especially through protocols and contracts. The government needs to continue learning how to assist with this and have procedures in place, as the existing process and legislation has a long way to go.

Bibi provided an exemplar of ACCC Fake Art as diminishing and deteriorating our culture, as it takes away the economic stimulus to the community and artists, as most people will just buy the cheap fake version, rather than spend money on an authentic piece.

**Appropriation of Cultural Heritage**

There was discussion surrounding appropriation of cultural heritage and that the reason Indigenous art may be more targeted in this area is because it might be harder to track down where the work is from, people are not educated, have a lack of care, or don’t understand the cultural connection tied to the work and the deeper meaning and messages behind it, which can be devastating on communities. There are a lot of cases where appropriate or inappropriate use of Indigenous heritage is misused. There is also a lot of appropriation from the tourist industry in advertising without consultation or collaboration with Indigenous communities.

**General points raised in the discussion**

Copyright infringements are more public outside of the South-East.

Questions raised around who has the right to pointillism, motifs, designs and symbols. This necessitates the need for background research, in particular in a contemporary urban art world.

It is the responsibility for dealers in shops and galleries to make sure work is authentic and to consult the Indigenous art code.

NSW will have a local summit prior to the NIACA event in 2021

This consultation is an international gateway to NSW and is for all Aboriginal artists and Islander artists to have an equal footing to the sector.

An Indigenous art code should be mandatory, especially for dealers and people need to comply with certain standards. There needs to be ongoing respect and care for the art work.

Artists don’t know what their rights are and what they should be.

While not mandatory there are a whole lot of other codes that certainly can be used as an analogy, there's one called the Kimberly process, which is for diamonds, which the idea is you are able to trace or required to be able to trace the diamond from the source all the way to the dealer.

Blockchain is being tested to protect provenance.

The Australia Council Protocols for using First Nations Cultural and Intellectual Property in the arts give you a good understanding of what ICIP is and the clauses that should be in contracts to make sure you are protected in that sense. While ICIP is not recognised under law, you can enforce it in contracts and of course the signing party is obligated to enforce those rights in the contract once they sign.

You have to check yourself, you have to say to yourself, I'll go home to country, I'll make sure I can do this and this and the Elders have been asked permission has been sourced.

You have to make sure the cultural protocols are in place.

When councils and organisations use artists for public works that are off country, it can be an issue. There's a preference especially for public works, local or on Country mob, because it's about place for us, it's about representing, and for some organisations it can be an issue, or there is more acceptance if you've got a connection to that Country. This is an issue that needs to be raised as part of this consultation so work can be done.

The questions in the consultation paper are kind of two pronged in the sense that you try and look at it from an Aboriginal person's cultural practitioner artist perspective, and then you're looking at it from the consumer, the user's perspective as well.

For some artists living in regional NSW there's a need for more education and understanding about rights. Access is a really big problem for us because most of the places are in the city - Create NSW, NAVA, the Indigneous Art Code, Arts Law. If we don't know them or of them we're not going to get the help we need - there's no fast-track way to get an answer. Relationship building with those organisations based in the city is important for us and spending time here and getting to know our artists and letting our artists get to know you. We need to strengthen our networks, our cultural networks so we know you and you know us as well as our needs.

To wrap up, Georgia Mokak from NAVA offered to have a look at your drafts before you submit them or invited people to call if you've got any questions.

Bibi Barba also offered that Create NSW are here to help also, any questions you have, or can help you with submissions, so please call if you need help.