

## **IDEAS FOR POLICY AND LEGISLATION FOR THE AUSTRALIAN VISUAL ARTS AND CRAFT SECTOR**

Prepared by the Visual Arts Industry Guidelines Research Project  
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After three years of study and discussion by the Visual Arts Industry Guidelines Research Project (VAIGRP) partners and researchers, exploration of international models and, above all, broad and thorough consultation with hundreds of people involved in all aspects of the visual arts and craft in Australia, the project has produced two concrete outcomes:

- the Code of Practice for the Australian Visual Arts and Craft Sector and
- a set of research papers from which a number of recommended Priorities for Policy and Legislation have been drawn.

A major finding of the project is the need for a better understanding of the value that visual artists and craftspeople contribute to Australia, both culturally and economically. It has been estimated by cultural economist Hans Guldberg that in 1996-7 Australian commercial galleries contributed \$16.8 million to the GDP, art museums \$50.4 million while \$9.7 million was added by local government museums and arts museums.<sup>1</sup> This represents only a proportion of the economic exchanges taking place in the sector. An ABS survey in 1997 showed that 786,000 people received some payment for their involvement in cultural activities in that year (equivalent to 5.4% of all persons aged 15 and over). 1.3 million were involved in these activities unpaid.<sup>2</sup>

Beyond these industry contributions, there are other forms of value being added. The cultural value created and disseminated by the arts is described by Australian cultural economist David Throsby as being of several kinds: aesthetic, spiritual, social, historical, symbolic and authentic.<sup>3</sup> The cultural contribution of artists is made in a variety of ways: through research and development (with an inspirational, leading-edge effect across a range of other areas of thought and enterprise); by generating innovative ideas, works of art and by providing consultancy services; by contributing to education and knowledge; expanding and changing visual language; by helping to define Australians' sense of personal and national identity; through augmenting the community's quality of life and adding to the country's visual heritage; by acting as a conduit for international diplomacy and for cultural exchange within this multicultural nation.

The VAIGRP believes that the visual arts sector operates in many senses according to an industry model while at the same time departing from it in some significant ways. Although profit making is usually not the primary motive of most artists' professional practice, they undoubtedly engage in value transactions, many of which have a commercial aspect.

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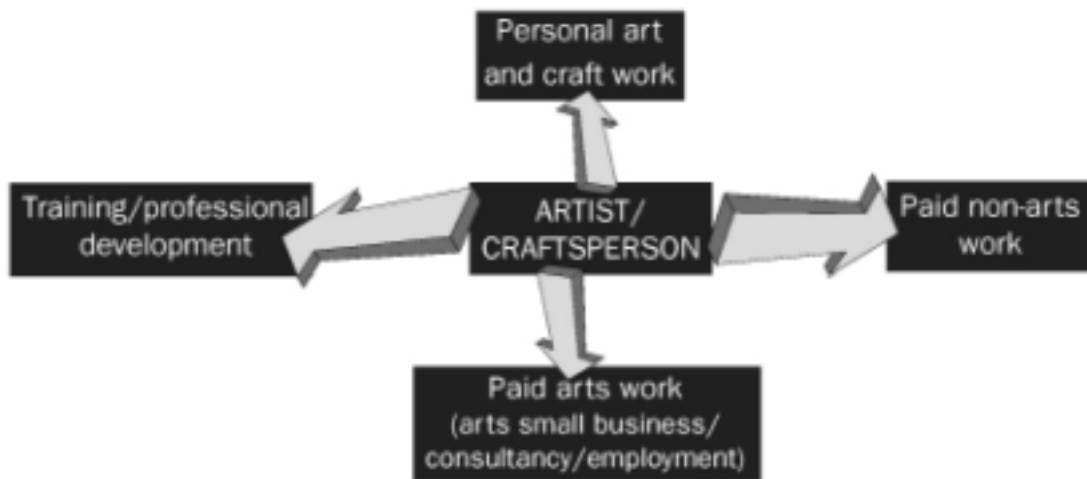
<sup>1</sup> 1 Guldberg H. (2000) *The Arts Economy 1968 – 98, three decades of growth in Australia* Australia Council, Australia.

<sup>2</sup> 2 Another demonstration of the economic significance of the visual arts is in Allen Consulting Group (2001, forthcoming) *The Economic Contribution of Australia's Copyright Industries*, prepared for the Australian Copyright Council and the Centre for Copyright Studies, Australia.

<sup>3</sup> 3 Throsby D. (2001) *Economics and Culture* Cambridge University Press, UK.

In order to enable the visual arts and craft segment of the “cultural industries” to become more viable, sustainable and productive, the project research has demonstrated that the unique aspects of arts practice require special arrangements to be made within the underlying legislative and policy conditions. Most of these legislative and policy frameworks have been devised for other industry sectors.

A number of important steps need to be taken by governments, the community and arts professionals themselves in order to realise the optimum contribution which artists and craft practitioners can make to the economy and to Australians’ quality of life. Vital to this process is an enhancement of the status of the arts in the eyes of the community and policy and decision makers. VAIGRP has positioned the artist/crafts practitioner as central to its study. The key recommendation from the research is that a whole of life approach should be taken toward supporting the work of Australian artists and craftspeople. The study found that artists and craftspeople over the course of their lives continually change their position in the four areas shown below, or are engaged in any combination of them concurrently:



In order to achieve coherent arts development, a set of inter-related and complementary actions need to be applied over the artist’s lifetime. It is recommended that there should be a whole of government approach, coordination across the three levels of government and increased government funding for the visual arts and craft sector.

Specifically, it is recommended that governments and other policy and support organisations will need to:

- make changes to legislation;
- introduce a variety of new forms of direct subsidy;
- develop initiatives to enable the community to support the sector more effectively;
- undertake advocacy and education campaigns.

It is hoped that the specific recommendations (set out below) will be examined in more detail through the process adopted for the Myer Inquiry into the Contemporary Visual Arts and Craft Sector.

## **Who should do what?**

The Visual Arts Industry Guidelines Research Project partners believe that, in order to realise the enormous potential of the visual arts and craft, certain steps need to be taken by art professionals, governments and the community.

The most important of these steps are:

- (i) increased professionalism, independence and adaptability on the part of all those involved in the visual arts and craft
- (ii) further pragmatic and far-seeing assistance by all levels of government, and
- (iii) greater positive engagement in, and direct contributions to, the visual arts and craft by members of the larger community.

As mentioned above, VAIGRP offers a concrete contribution towards the achievement of these goals through:

- (a) a Code of Practice for the Australian Visual Arts and Craft Sector and
- (b) a list of Priorities for Policy and Legislation.

*The Code* is a handbook for fair dealing by all concerned in professional visual arts and craft activities. Available at [www.visualarts.net.au](http://www.visualarts.net.au), it is the most detailed and thorough document of its kind ever compiled. It covers all aspects of Buying, Selling and Collecting Art and Craft; Public Art and Special Purpose Commissioning of Art and Craft; Residencies and Workshops; Competitions, Prizes, Award and Fund-Raising Exhibitions; Tax, Insurance, Copyright, Moral Rights, Resale Royalty, OH&S and Equal Opportunity; and Indigenous Protocols. The Code should be read in conjunction with *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector*, available from the National Association for the Visual Arts.

*The Priorities for Policy and Legislation* concern the social, legal, economic and customary conditions of visual arts and craft practice. They are in no sense as wide-ranging and complete as is the Code. Rather, the Priorities are suggestions about the ways in which governments and other funding and policy agencies, arts professionals, arts institutions and the community might work together to help improve these conditions, and spread the benefits of creative industry through Australian society and internationally. As such, they are points of reference for advocacy, and guides towards areas where there is a need for timely action. The Priorities are summarised below. A full account of them may be found at [www.visualarts.net.au](http://www.visualarts.net.au).

## **What can those who work in the visual arts and craft sector do?**

- Adopt the Code of Practice and apply it in all of their dealings.
- Encourage governments at all levels to endorse and implement the Code, and to take up the suggestions made in the Priorities, as well as other initiatives put forward by visual arts and craft representative organisations as appropriate.
- Advise the National Association for the Visual Arts (NAVA) of areas where the Code might be improved or extended; engage in regular consultations to revise the Code as circumstances change.

- Pursue their civic rights and undertake to fulfil their obligations as members of Australian society whose creative contribution and potential is recognised in both concrete and significant symbolic ways.
- Encourage other Australians to support and sustain the visual arts and craft through practical forms of participation and subsidy.

### **What can federal, state and local governments do?**

- Formally recognise and promote the value of the arts and the professional status of artists.
- Adopt a whole of government and inter-government approach to support for arts policy and funding.
- Increase core funding for the Australia Council, as the primary arts advisory and core funding support body for the sector.
- Endorse the Code and implement it in the procedures and practices of all government agencies.
- Pursue policy and enact legislation to provide equitable, sustainable and practical assistance, as well as recognition of the rights of arts professionals, in such areas as taxation, superannuation, copyright, freedom of expression, new approaches to income growth and support, awards and other areas bearing on the social, legal, economic and customary conditions of visual arts and craft practice as they arise.
- Enable the establishment of appropriate funds and agencies for the maintenance of such assistance.
- Act to positively encourage community contribution to and participation in the arts.

### **What can members of the community do?**

- Engage actively in public debate concerning the nature, value and purpose of the arts.
- Contribute towards the sustenance and growth of the arts whenever the opportunity arises through participation, volunteer work and by offering financial and in-kind support.
- Facilitate the implementation of programs and arrangements designed to promote and sustain the arts.
- Encourage their political representatives to support and sustain the arts in ways proposed by representative groups, especially by seeking ways to match arts self-help and governmental patronage with appropriate forms of community support.
- Ask governments to commit to programs designed to encourage and facilitate community support for the arts, such as taxation relief for artists and tax incentives for gifts to artworkers, organisations and institutions.

## **PRIORITIES FOR POLICY AND LEGISLATION**

### **1. LEGISLATION and related arrangements**

#### *Status of the Artist:*

- Enact legislation which formally recognizes the value of the visual arts and craft and the professional status of artists and craftspeople, in accordance with Australia's endorsement of the UNESCO *Recommendations Concerning the Status of the Artist* (adopted by the General Conference in 1980).

#### *Freedom of Expression:*

- Legislate to guarantee artists' freedom of expression as a right under this Status of the Artist Act.

#### *Registration*

- Investigate the establishment of a national professional accreditation or registration scheme for visual arts and craft practitioners to be applied only for limited purposes (tax, social security, superannuation, stipends, pensions).

#### *Taxation and levies:*

- Secure a public ruling from The Australian Tax Office (ATO) recognising arts industry indicators as the basis for assessing whether artists are in business or are hobbyists
- Provide income tax relief for professional artists and craftspeople, referring to arrangements in Ireland as a model.
- Lift the \$40,000 cap imposed by the New Taxation System Integrity Measures legislation, which restricts artists' ability to claim legitimate arts related expenses against all forms of income.
- Provide further incentives for gifts to public and non-profit arts institutions and organisations.
- Introduce levies on gambling revenue (lotteries, casinos, etc.), hotel beds, entertainment industries and equipment used for copying to establish funds for the subsidy of services to the visual arts and craft sector.

#### *Copyright:*

- Urge the Government to act upon the House of Representatives Standing Committee on Legal and Constitutional Affairs' recommendation, in its report *Cracking down on copycats: enforcement of copyright in Australia* (November 2000), that it be given a reference 'to inquire into the mechanisms for the protection of indigenous cultural and intellectual property.'
- Extend the general period of copyright on art work to 70 years after the death of the creator
- The Government should review the Copyright Amendment (Digital Agenda) Act 2000 within three years, in order to ensure that it is operating in a satisfactory manner. The Government has undertaken to carry out such a review, which should aim to ensure that the amendments are not unfairly prejudicing the rights of visual artists and other creators of copyright material.
- Actively monitor the impact in practice of the consent provisions and the 'reasonableness' defence within the moral rights legislation, and consider whether these will need to be amended in the future.
- The Australian Parliament should amend the Copyright Act to bring the rules for duration of copyright in photographs into line with the rules that apply to other artistic works.

- As recommended by the Intellectual Property and Competition Review Committee, the Copyright Act should be amended to remove the special provisions which currently provide that government rather than individual creators will be the first owner of copyright in material created or first published under its direction or control.
- The Australian Parliament should amend the Copyright Act to include, under the educational copying provisions, a commercial availability test for artworks in digital form.
- As recommended by the House of Representatives Standing Committee on Legal and Constitutional Affairs (November 2000), a small claims jurisdiction should be established in the Federal Magistrates Court to assist individual artists to resolve copyright disputes without recourse to costly legal proceedings.
- The Australian Parliament should retain the current legislative regime with regard to restrictions on importation, and accordingly reject the Copyright Amendment (Parallel Importation) Bill 2001.
- Repeal sections 65, 66, 67 & 68 of the Copyright Act 1968 (Commonwealth), as these provisions operate to disadvantage artists and craft practitioners in comparison with other types of creators.

*Resale Royalties:*

- Undertake balanced research into the merits or otherwise of introducing artists resale royalties.

## **2. DIRECT AND INDIRECT SUBSIDY**

Substantially increase untied core funding to the Australia Council, index this annually and review it regularly.

### **Artists Support**

- Explore overseas models of artist income support, such as the Netherlands' Income Provision for Artists Act (1998).
- Establish subsidised superannuation and benevolent schemes for arts professionals
- Establish a portable benefits and entitlements scheme for visual artists and craft professionals, who frequently move across employment areas or rotate in and out of paid work.
- Introduce policies that promote the creative and career development of artists experiencing unemployment. With regard to unemployment benefit, authorise Centrelink to accept art practice (including studio work, portfolio building and exhibitions) for the Newstart activity test and as an approved mutual obligation activity.

### **Infrastructure**

- Establish a national arts industry research centre.
- Establish an appropriate and effective arts industry development scheme.
- Expand the New Enterprise Initiative Scheme (NEIS), and in particular restore funding to arts focused specialist NEIS programs such as the highly successful arts small business program that operated in Victoria pre-1997.
- Create a national network of state-based artists' employment agencies (similar to those operating in Queensland and Western Australia).
- Provide arts access facilities including workspace and equipment for innovative projects. These collective studios or 'creative spaces' should be located both in regional Australia and in the cities.

- Provide incentives to commercial galleries to give emerging artists (of any age) their first exhibition.

### **Education**

- Increase funding to tertiary education in the visual arts and craft.
- Reintroduce funding for artists in schools and artists in community
- Give effect to the emphasis on visual arts and craft instruction in the national curriculum for primary and secondary education programs.

### **Governmental practice:**

- All levels of government to be required to mandate the allocation of a % for art on public and private building projects.
- Require all levels of government to extend their public liability insurance cover for any public art projects which they commission.
- Limit artists' professional indemnity liability to one year after the completion and installation of a public artwork.
- All levels of government to be encouraged to commission new works of art for government and public projects.
- Require all government agencies to hire or purchase works of art for display in public buildings.

### **3. LIAISON AND ADVOCACY**

- Federal and state/territory arts ministers to consult at least annually with arts industry representative bodies concerning needs and changes in the industry.
- Bring leading practitioners, representative bodies and researchers together every two years for a round-table review of the health of the visual arts and craft industry.
- Undertake an education campaign in the sector to promote understanding of the requirements of copyright, and in particular to encourage all artists and craft practitioners to join Viscopy. The House of Representatives Standing Committee on Legal and Constitutional Affairs (November 2000) recommended that a public education campaign should be conducted, and that funding should be made available for such a campaign.
- Conduct an insurance awareness campaign aimed at arts and craft professionals.
- Promote discussion in the industry of issues relating to the jurisdiction of the Copyright Tribunal.
- Discuss ways to clarify the distinction between Copyright and Design law, in relation to problematic areas of overlap.

### **4. WHOLE OF LIFE FORMS OF ASSISTANCE TO ARTISTS**

Looking again at the pattern of artists' activity, the following are suggested forms of support in the various categories.

#### **PERSONAL WORK**

Research Funding  
 Grants + Fellowships  
 Residencies  
 Stipend / Guaranteed Income  
 Tax Relief  
 Artist / Exhibition Fees  
 Resale Royalties

Copyright (primary + secondary)  
Public Lending Right  
Exhibition Support Incentive Scheme  
Studio Space Subsidy  
Travel Schemes  
Honours and Awards  
Arts Infrastructure Support

#### TRAINING

Primary / Secondary Arts Curriculum  
Federal Government Grants for Tertiary Training  
Privately Provided Training  
Scholarships  
New Enterprise Incentive Scheme (NEIS)  
Mentorship  
Work Experience

#### PAID ARTS WORK (ARTS SMALL BUSINESS/CONSULTANCY/EMPLOYMENT)

Sales of Artwork  
Consultancy + Teaching  
Full Time / Part Time / Casual Employment  
Commissions  
Design / Production of 'Products'  
Projects  
Pooled Benefits + Entitlements  
Business Incubator Schemes  
Starter Stipend / Living Wage  
Artists and Craft Practitioners in Schools / in the Community  
Subsidised Employment or Referral Agencies  
Superannuation  
Unemployment Benefit (Newstart)  
Other Benefits (childcare, medical, etc.)

#### **VAIGRP Working Papers**

In the course of its work, the VAIGRP researchers produced a number of Working Papers. The following will be available at the web addresses below.

David Throsby and Chris Madden, An Economic Model for the Visual Arts Industry in Australia.

Adrian Brooks, Occupational Health and Safety for Visual and Craft Artists.

Ian McDonald/Australian Copyright Council, Copyright and Moral Rights for the Visual Arts and Craft.

#### **Forthcoming:**

Australian Centre for Industrial Relations Research and Training (ACIRRT), A Survey of Members of the National Association for the Visual Arts (NAVA), 2001.

ACIRRT, Pooled Benefits and Entitlements for Visual Artists.

ACIRRT, Superannuation for Visual Artists.

Jenny Lovric, Freedom of Expression in the Visual Arts.

Peter Anderson, Concepts and Criteria of Professionalism for Visual and Craft Artists.

Virginia Hollister and Esther Rice, Artists' Income Support and Subsidy Schemes.

Contact Power Publications, Power Institute, University of Sydney, N.S.W. 2006 at tel. 6129351 6904, fax 61-2-9351 7323, website

<http://metapix.arts.usyd.au/power/institute>



Or through NAVA, PO Box 60 , Potts Point, NSW 1335, phone: (02) 9368 21900,  
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