



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Statement of requirements

Market Research

Introduction

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) requires the assistance of a Panel Member to conduct market research activities to help inform approaches to future consumer communication and/or education activities about the harm caused by fake art, merchandise and souvenirs.

Purpose

The Australian Government is introducing new laws to protect Indigenous cultural and intellectual property (ICIP) rights, also known as traditional knowledge and cultural expressions.

Legislation will be developed through a First Nations-led process, addressing the harm caused by fake First Nations style art, merchandise, and souvenirs in the first stage, with a second stage to focus on broader forms of traditional knowledge and cultural expressions.

As part of the project, DITRDCA is also seeking to educate domestic and international buyers about the impact of inauthentic art on the First Nations cultural sector and to promote informed consumer decision-making.

Market research will focus predominantly on the Australian public (domestic consumers/buyers) and will provide an evidence-base to inform future approaches to this work. We would also like to explore the extent to which the research can capture the views of international consumers/buyers.

Background

A 2022 report by the [Productivity Commission](#) revealed that more than half of all purchased merchandise and souvenirs with First Nations art and designs are inauthentic or are made without permission from Traditional Owners. This causes harm to First Nations artists, communities and culture.

In response, the Australian Government committed to introduce new legislation to recognise and protect First Nations traditional knowledge and cultural expressions, including to address the harm caused by fake First Nations style art, merchandise and souvenirs. The proposed legislation will recognise the cultural rights and authority of First Nations peoples.

The government's commitment to introduce legislation to protect ICIP was announced in the National Cultural Policy, *Revive: A place for every story, a story for every place* on 30 January 2023. The legislation will be developed by a First Nations-led process over 4 years.

Traditional knowledge and cultural expressions is a vast and complex area. In order to address fake art in a timely way, DITRDCA is taking a staged approach to developing the legislation. The first stage aims to legislate a framework that addresses the harm caused by fake art, merchandise and souvenirs.

To inform the first stage, DITRDCA undertook significant community engagement with key stakeholders, including First Nations communities, artists and art centres, and interested members of the general public, between 4 March and 26 June 2024. Extensive feedback was received through 43 public engagement sessions across 38 locations nationally (see table 1), 3 online engagement sessions and workshops and meetings with other First Nations bodies and key stakeholders, as well as through written submissions.

Feedback received over the 16-week community engagement period included:

- The need for greater awareness of the rights of First Nations people and the need to respect First Nations cultures, the need for legally enforceable penalties for any First Nations art, merchandise and souvenirs created without input or permission from Aboriginal or Torres Strait Islander people.
- Support for the banning of art, merchandise and souvenirs made without any input from Aboriginal or Torres Strait Islander people.
- Support for stronger penalties for breaches of cultural rights by non-Indigenous persons and corporations.
- The need for greater financial assistance to support communities and artists in protecting and responding to breaches of cultural rights.

This critical feedback will help inform the drafting of the first stage of the new legislation, which will cover fake art, merchandise and souvenirs and is expected to be introduced in 2025.

State/ Territory	Locations
ACT	Canberra
NSW	Albury-Wodonga, Coffs Harbour, Dubbo, Lismore, Moree, Parramatta, Sydney, Tweed Heads, Walgett, Wagga Wagga, Wollongong
NT	Alice Springs, Darwin, Katherine, Yirrkala
QLD	Brisbane, Cairns, Gold Coast, Mt Isa, Rockhampton, Sunshine Coast, Thursday Island
SA	Adelaide, Ceduna, Port Augusta
TAS	Burnie, Hobart, Launceston

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VIC	Bairnsdale, Ballarat, Melbourne, Shepparton
WA	Broome, Geraldton, Kununurra, Perth, Port Headland
National	Online

Table 1. Public engagement session locations.

The second stage of the development of the legislation will focus on the broader, more complex issues regarding rights and enforcements and will be guided by First Nations experts, and engagement with communities and stakeholders.

A [First Nations Expert Working Group](#) will be established in the second-half of 2024 to guide the development of the new legislation. The Expert Working Group will comprise of 8 members who bring extensive expertise in matters relating to ICIP. Applications are now open and close on 20 September 2024.

Key considerations

Low consumer awareness

A lack of accurate consumer knowledge and awareness continues to present a barrier. As such, there is a role for the government to provide accurate and accessible information to consumers to boost their awareness, knowledge and confidence in buying authentic First Nations art. Information should be sensitive, simple, reliable and designed to fill identified gaps in consumer knowledge and understanding amongst target audiences. It will also be important to determine the most effective communication channels and messaging for these groups.

Cultural sensitivities

This market research needs to be handled with great sensitivity and tact. Western and First Nations notions of authenticity do not always align, and there is no agreed definition of authenticity as it applies to First Nations art and culture. A possible working definition of authentic First Nations art is:

Works of art, either produced by, or with the authorisation of, First Nations people who have a cultural connection with the cultural expressions or knowledge used in the work of art.

Traditional knowledge and cultural expressions are connected to specific communities and encompass more than visual arts and crafts. They also include skills, language, symbols, genetic resources (such as flora and fauna), music, song, dance and stories.

A straightforward example where authenticity has clearly been breached is the appropriation of ICIP by non-Indigenous peoples through the reproduction of First Nations designs on goods (such as merchandise or souvenirs) without the permission or participation of artists and their communities.

More complex examples include when ICIP is shared between First Nations language groups and when it's appropriated between First Nations people. In these circumstances it becomes a highly sensitive issue.

Other questions that may arise when it comes to the appropriation of ICIP include:

1. Who in community may authorise the use of culture?
2. To what extent can non-Indigenous people assist in the creation of First Nations works of art while ensuring its authenticity?

While we don't anticipate any consumer communication and/or education activities will need to go into this level of detail, it is important to be aware of the context.

Media and communication activity

Media has been used effectively to promote key milestones, such as the commencement of the first stage consultations, where the Minister for Arts, Tony Burke, and Minister for Indigenous Australians, Linda Burney, issued a [joint media release](#). Tailored media releases were also used to promote community engagement sessions and encourage participation. Media during this time was overall positive and included a number of broadcast interviews with DITRDCA spokesperson Trish (Patricia) Adjei.

A departmental media release was issued when applications opened for the First Nations Expert Working Group, which resulted in one media mention in the [National Indigenous Times](#). The application process is being promoted through a range of paid print, social and digital channels as well as through owned and stakeholder channels through until the close of applications on 20 September.

Previous research

The government's commitment to working with First Nations peoples to establish stand-alone legislation to recognise and protect First Nations traditional knowledge and cultural expression, relates to the findings and recommendations of the following recent reports:

- [Scoping Study on Stand-Alone Legislation to Protect and Commercialise Indigenous knowledge, this report \(2023\)](#).
- [Productivity Commission's Study Report on Aboriginal and Torres Strait Islander Visual Arts and Craft \(2022\)](#).
- [House of Representatives Standing Committee on Indigenous Affairs' Report on the impact of inauthentic art and craft in the style of First Nations peoples \(2018\)](#).
- [The Senate Standing Committee on Environment, Communications, Information Technology and the Arts – Indigenous Art Securing the Future – Australia's Indigenous visual arts and craft sector \(2007\)](#).

Various peak bodies also provide limited information (e.g. National Association for the Visual Arts (NAVA), Indigenous Art Code and Arts Law Centre of Australia).

The 2016 Arts Law Centre, Indigenous Art Code and Copyright Agency [Fake Art Harms Culture](#) campaign is an example of previous communication activity and advocacy that has occurred in this area.

Project requirements

The successful supplier will deliver market research to help establish what the target audiences' baseline awareness levels are of ICIP rights and the issue of fake First Nations style art, where they expect to find or would look for information about authenticity or inauthentic/fake art, merchandise

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and souvenirs, and any barriers to receiving information. The research will help to inform future approaches to communication and/or education activities on this topic including key messages, channels, and effective and appropriate language and visual style.

It is necessary to:

- Develop an understanding of the target audience— including determining their current level of awareness of ICIP rights and the harm caused by inauthentic/fake art, merchandise and souvenirs—and their knowledge, attitudes, behaviours, intentions, expectations and perceptions for accessing information in relation to buying inauthentic art. Specifically, where people would look or expect to find information about how to identify inauthentic/fake art, merchandise and souvenirs, what questions to ask the art seller/dealer, art centre and artist as well as the information types they are seeking.
- Identify any differences among the target audience demographics and attitudes, and establish priority audiences and segmentations where appropriate.
- Understand the current sources of information about ICIP and inauthentic/fake art, and identify any gaps in information or opportunities for consideration.
- Determine if there are any key motivators or barriers to communicating to the target audiences.
- Provide advice about the most appropriate communication channels, imagery, execution, messaging, tone and visual style for communication and education activities to reach these audiences.

The communication mix and key messages will raise awareness of the issue of fake First Nations style art, merchandise and souvenirs and the harm it causes to First Nations communities, with the ultimate goal of helping buyers to identify authentic artwork and make informed purchases.

DITRDCA's objectives for the communication and/or education activities, to be informed by the market research, are to:

- Raise awareness of the harm caused by fake First Nations style art, merchandise and souvenirs on First Nations artists, communities, and the cultural sector amongst domestic and international consumers.
- Deliver a compelling communication and/or education approach that will educate domestic and international consumers on how to identify authentic First Nations art and to make informed ethical purchases.
- Develop engaging information and materials about this issue and practical steps consumers can take to avoid buying inauthentic art products.

Target audiences

The market research will have a national approach and should also include international audiences where possible.

Primary

- Australian public
- Domestic buyers of art, merchandise and/or souvenirs

Secondary

- International visitors/tourists buying art, merchandise and souvenirs
- International buyers (online)

Objectives

The market research will:

- Develop an understanding of the target audience—including determining their current level of awareness of ICIP rights and the harm caused by inauthentic/fake art, merchandise and souvenirs—and their knowledge, attitudes, behaviours, intentions, expectations and perceptions for accessing information in relation to buying inauthentic art. Specifically, where people would look or expect to find information about how to identify inauthentic/fake art, merchandise and souvenirs, what questions to ask the art seller/dealer, art centre and artist as well as the information types they are seeking.
- Identify any differences among the target audience demographics and attitudes, and establish priority audiences and segmentations where appropriate.
- Understand the current sources of information about ICIP and inauthentic/fake art, and identify any gaps in information or opportunities for consideration.
- Determine if there are any key motivators or barriers to communicating to the target audiences.
- Provide advice about the most appropriate communication channels, imagery, execution, messaging, tone and visual style for communication and education activities to reach these audiences.

Methodology

Potential suppliers should outline a recommended research methodology to achieve the objectives outlined above and to reach the target audiences identified.

Ethics

The Panel Member is expected to consider ethics in their proposal, including cost and time required for external Human Research Ethics Committee (HREC) review should this be deemed necessary.

Deliverables

The successful research agency will be required to work closely with DITRDCA's Strategic Communication and Standalone Legislation teams and provide regular updates on the progress of the research. The frequency of these updates will be agreed at the time of the work order being signed.

Deliverables for this project are:

- a detailed timeline that clearly sets out each phase of the research, the activities involved in each and delivery of reporting
- verbal updates (frequency to be agreed) about progress and initial findings during fieldwork
- interview/discussion guides
- a draft report for consideration and feedback by DITRDCA

- a final written report for DITRDCA approval including:
 - executive summary
 - a copy of the research instruments (e.g. questionnaire, discussion guides)
 - a summary of the research methodology
 - dates, times, locations and number of participants who took part in fieldwork
 - a verbal presentation to members of the project teams, the expert working group, the Minister and DITRDCA executive as required
 - a summary of fieldwork statistics and weighting specifications
 - analysis and interpretation of research results, and
 - recommendations on how to apply research findings in order to develop and implement effective communication and education activities, including appropriate key messaging, channels, communication mix (including recommended collateral), tone and style, risk mitigation strategies and future considerations.

Proposed timetable

The proposed timeframe for the market research activity is below.

Event	Proposed Date
Submission of quotation to DITRDCA	Mon 23 September 2024
Work Order offer	Wed 9 October 2024
Inception meeting in Canberra (or video conference), to finalise project plan	w/c 14 October 2024
Commence fieldwork	w/c 21 October 2024
Draft final report	By 29 November 2024
Final report and presentation	Friday 13 December 2024

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



TAX INVOICE

Department of Infrastructure, Transport,
Regional Development, Communications and the
Arts
Attention: s22(1)(a)(ii) Assistant Director,
Strategic Communication & Social Media Team
PO Box 594
CANBERRA ACT 2601
AUSTRALIA
ABN: 86 267 354 017

Invoice Date
26 Nov 2024

Account Number

Invoice Number
INV-1070

Reference
45-150846

ABN
65 605 178 603

Whereto Research Based
Consulting Pty Ltd
200/18 Kavanagh St
SOUTHBANK VIC 3006
AUSTRALIA

Description	GST	Amount AUD
1946-5732 s47G(1)(a) s47G(1)(a)	10%	\$28,000.00
Subtotal		\$28,000.00
Total GST 10%		\$2,800.00
Invoice Total AUD		\$30,800.00
Total Net Payments AUD		\$0.00
Amount Due AUD		\$30,800.00

Due Date: 26 Dec 2024

Please remit payment to:
Whereto Research Based Consulting Pty Ltd
s47G(1)(a) @wheretoresearch.com.au
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TERMS - STRICTLY 30 DAYS

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200/18 Kavanagh St
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AUSTRALIA

Customer Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts

Invoice Number INV-1070

Amount Due \$30,800.00

Due Date 26 Dec 2024

Amount Enclosed

Enter the amount you are paying above