

Towards national standards for art in the public space

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The overwhelming majority of disputes that seek NAVA's support are about public art projects.



Image: Fiona Foley, *Witnessing to Silence*, 2005. Brisbane Magistrates Court, Qld. Photo by Scott Burrows.

Art in the public space brings the artist's voice and vision into the civic realm – the realm of public ethics, public decision-making and public values. And yet, without national standards covering the full scope from conception to maintenance, the artist is far too often the first to lose. As we begin a major revision of the Code of Practice, NAVA is looking at exactly this, asking questions on what needs to be included in national standards that the entire industry can adopt.

Approximately 80% of the disputes that come to NAVA concern public art: regular reports of exploitative EOs; lengthy and contradictory contracts issued after the work has started, or sometimes, after it's been completed; having to work with third-party fabricators who neither like nor understand art; change of project direction or timeline without warning or compensation to the artist; confused approaches to maintenance, from short-termism lengthy lifetime agreements; and so much more.

Without a national approach to commissioning public art, including widespread recognition and mandating of best practice, it remains a relatively ad hoc industry. Public art commissions gone pear-shaped come to NAVA too often, and with so many inconsistencies, we risk seeing artists turn their back on this important opportunity.

Public art tells us something important about the place we live in or the place we're visiting. It offers rich insights into a local culture, the ideas it can foster and the place it can become. It expresses a community's willingness to think differently and take confident risks together.

UAP Studio collaborates with artists, architects, designers and developers to create new work in the public realm. Principal Carolyn Karnovsky told NAVA: "Showcasing and celebrating authentic stories of place and culture is fundamental to shaping vibrant, engaging and memorable places to live, work and visit. As towns and cities across Australia grow and develop, the role of creativity, culture and community must be explored and public art is one of the most successful platforms to do so."

The social and economic benefits of public art are well researched; there's no doubt that art in the public space can engage communities and neighbourhoods and even draw widespread visitors to a place. Presenting work in public space also offers artists the opportunity to make important and impactful commentary to general audiences outside an institutional context.

For example, [Dr Fiona Foley](#) says public art is a platform "to write Aboriginal people, Aboriginal nations and Aboriginal history back into the Australian narrative." Similarly, [Tony Albert](#)'s seven-metre-tall, 1.5-tonne bullets and shell casings installed in Sydney's Hyde Park are a tribute to Aboriginal and Torres Strait Islander ANZAC diggers. In a recent conversation with NAVA, he said: "It meant so much for me to conceptualise something in the public sphere that has been unrecognised for such a long time."

Art in the public space is as old as humanity. While public art is not a new concept, its popularity in Australia has boomed since the 1980s, and even more so in the last two decades alongside a global movement that academically acknowledges the power of art in engaging people and place. In an era where public space is increasingly commercialised, public art is a counter to the alienation that is too readily generated by that transactional approach. Increasingly we see public art on highways, in new developments, and in the heart of cities who pride themselves on their local innovation and global outlook. Art in the public space stimulates reflection and imagination, creating new points of connection between increasingly busy people.

In the lead up to [Future/Forward](#) in August, NAVA has been discussing the types of legislative and regulatory change that will have real impact for artists and the sector at large. Here are three key areas we need to understand and document responsibly into national standards:

1. EOIs

NAVA's Code of Practice recommends that artists can be asked for a CV and examples of previously completed commissions or other relevant work at the Expression of Interest (EOI) stage. Artists may be required to write a short response to the brief, but researched designs and or developed briefs should not be prepared without a fee.

Currently, we see too many cases where calls for EOIs ask for drawings of the proposed concept, description of the work, and a completed maquette, sometimes including installation details and a detailed project budget. Asking for this kind of work requires up to 100 hours of unpaid research and development for a project that the artist may never get to realise, not to mention the expense of producing 3D renders and models.

Lynda Roberts of [Public Assembly](#) told NAVA: "As most government authorities require an open call for artists, getting the EOI and project brief right is critical. In my experience at City of Melbourne, it was more important to focus on an artist's approach and track record, investing in a rigorous research and development stage rather than what the artwork might look like up front."

Many of the artists and public art consultants we spoke to also encourage authorities to think outside of pre-conceived ideas that public art should be permanent. "Review your budgets – shift away from capital works / asset driven commissioning and invest in temporary public art. Temporary artworks are a great way to test sites and ideas for future permanent works and initiate conversations with key stakeholders," said Lynda Roberts. Jonathan Jones agrees: "When artworks are contractually stipulated as having to last 25 years or more you are already pre-determining the materials and what's possible. You could achieve a lot more if a project was for 5 years instead."

2. Contracts

Because no two public spaces are the same, no two public art commissions are the same. Therefore, contracts between different projects and different parties are best specifically tailored to the complexities involved in a particular project. Unfortunately, what sometimes happens instead is that contracts are 'cut-and-pasted' together from other contracts. NAVA receives numerous queries each year from independent artists who receive contracts with unfair clauses with regard to intellectual property, moral rights, payment terms and maintenance arrangements. Often contracts are issued at an unreasonably late stage in a project's timeline – sometimes as late as the day of the launch of the public artwork, or even well after completion.

When a contract is contested, payment is delayed until the matter is resolved. NAVA is aware of cases where artists have waited up to two years after completing a public artwork for the contract to be resolved and thus for their fee to be paid. Due to the legal costs of

lengthy negotiations or disputes, artists can feel bullied into agreeing to either unfair terms or receiving no payment.

Tony Albert makes this argument succinctly: “I would like someone independent from the commissioning body to help oversee the project. I found it sometimes really hard as an artist to not be bulldozed by the commissioning body.”

Jonathan Jones raises an important issue for Aboriginal artists, Elders in particular: “Most public art projects call on the artist to take on the entire responsibility of the project including the financial risk. You need to have money in the bank, a trusted legal, and structural engineering team behind you to take on these projects. That privileges a few and simply excludes so many artists and Elders from contributing to public art.” He goes on to explain: “This is why I work with communities and Elders - to ensure they have the opportunity to engage with public art. I use my resources to collaborate with others to share their stories.”

The Arts Law Centre of Australia provides a sample contract [Public Visual Artwork Agreement](#), and Artists in the Black have produced a [Collaboration Toolkit](#) which includes resources for use in major collaborative arts projects involving Aboriginal and Torres Strait Island artists. These resources are supported by NAVA to comply with best practice. There’s more work to be done in developing a guide to key clauses that public art contracts must contain.

3. Fabrication

Typically, the process for commissioning public art follows the same procurement process for anything that’s installed in the public space: a park-bench, a play-ground or even a toilet block. Depending on the scale of the project and size of the budget, an artist’s design may be put out to open or limited tender. Huge problems can arise that alter the finish and life of an artwork when fabrication is tendered out, rather than ensuring that the artist leads the process.

Lindy Lee has created work in the public space in urban and regional centres across Australia. She told NAVA: “The relationship between artist and fabricator is very very important... The ‘final object and design of installation is just the tip of the iceberg. A huge amount of time and effort goes into the development stage. In the process, the fabricator gets to understand the philosophical and materiality issues that drive the artist’s work. It’s a complex and actually quite profound interaction. A lot of trust and understanding is developed by working through a number of projects together. It is truly collaborative. The artist has the creative vision and the fabricator helps to deliver that vision. The fabricator understands the aesthetic required by the artist.”

There’s a lot of good work to be done in developing national standards for art in the public space. NAVA recognises the importance of leading this work in collaboration with the full range of interested parties, ensuring that government and commissioning bodies have the best frameworks for trusting and supporting the vision of the artist.

At [Future/Forward](#), NAVA will present a session on art in the public space which will be led by artist, Dr Fiona Foley. Ahead of that we're presenting a full day's workshop to start to identify areas for action. It's a critically important area for us and for the nation.