

DOSSIER: JABANUNGA (RAINBOW SERPENT), 1996

A forensic analysis by Dr Suzanne Spinner of the provenance of Jabanunga (Rainbow Serpent), 1996 and an examination of issues arising from the donation of the work to the NMA.

*The **Dossier** should be read in conjunction with the **Timeline: the wider context**.*

DISCLAIMER

In all the material I have submitted here and in supporting documents, please note, I am discussing the dealings of certain individuals, in relation to the work of Rover Thomas and various other East Kimberley artists and NOT making any comment about these individuals in relation to their dealings with any other Indigenous artists, or their professional or commercial dealings in general.

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JABANUNGA (RAINBOW SERPENT), 1996

On February 24, 2022, The National Museum of Australia (NMA) announced that a painting by Rover Thomas called Jabanunga (Rainbow Serpent) valued at \$1.2 million had been donated under the Cultural Gifts Program (CGP) by Lauraine Diggins's widower, Michael Blanche, in memory of Lauraine.

Preamble: Provenance and public institutions

Former Justice Susan Crennan undertook two reviews into the problematic provenance of 'The Dancing Shiva' which helped the National Gallery of Australia develop new acquisition frameworks.

Nick Mitzevich, Director of the NGA said her findings revealed, they could have "no faith in the dealer's ethics" and as a result, "we have strengthened our processes and have zero tolerance now for any inconsistencies in the provenance of a work of art". He added that, "This is another step in building an ethical approach to managing our collection" and taking seriously, "the ethical and legal collection of works of art".

The NGA has now taken steps to strengthen its provenance policies:

"With these developments, provenance decision-making at the National Gallery will be determined by an evidence-based approach evaluated on the balance of probabilities, anchored in robust legal and ethical decision-making principles and considerations".

The key issues

1. We contend that the NMA should not have been accepted the painting by Rover Thomas of Jabanunga (Rainbow Serpent) 1996 as a donation under the CGP.
2. We find it is not a well-provenanced work, and further, that it is the ethical duty of public institutions such as the NMA to only accept work with the best provenance.
3. We question whether the NMA undertook due diligence and interrogated the Valuers' Reports, because we note there are significant omissions, anomalies, contradictions, and errors in them.
4. We also consider issues arising from the donation about the value of the painting, the validity of its certificate, the authenticity of the painting and the relationships between the parties.
5. Finally, we evaluate the donation in terms of ethical provenance and find it wanting.

Dr Suzanne Spinner, Dr Lyndon Ormond-Parker, and Dr Jacqueline Healy.

The Provenance explained

This donation under the CGP raises many issues. The painting was described, on the NMA Press Release as being created at “the fledgling Warmun community art centre”, which was a careful way of not saying it came from Warmun Traditional Arts, while implying it came from Warmun Art Centre.

Provenance in general means simply place of origin, where something comes from.

This discussion will examine provenance in three degrees:

Provenance in the First Degree - where the artwork comes from, its origin, who made it, where it was made and when.

Provenance in the Second Degree - refers to provenance as it is understood in the discipline of Art Authentication, as a **chain of ownership**, from when the artwork was made, until now and all the various points or moments in the life of the work. There will always be some documentary evidence of the chain of ownership and while it is unlikely all documents will be available for scrutiny, there must be enough verifiable documents to securely establish the chain.

Provenance in the third degree – refers to the implications that a provenance raises, which move into questions of the authenticity of the work itself.

I will be focusing on provenance as it is understood in the first and second degree, however as the degrees of provenance are logically related, the discussion will eventually lead to a discussion of authenticity, provenance in the third degree.

Good provenance and preferred provenance

It is well recognised that good provenance for work by East Kimberley artist, Rover Thomas means that they came from Mary Macha, his first dealer with whom, he began painting in 1983 or from Waringarri Aboriginal Arts, the community art centre in Kununurra established in 1985 and with whom he worked until his death in 1998. Rover Thomas worked with three Waringarri Arts Co-ordinators, Joel Smoker, Tony Ellwood and Kevin Kelly and Kelly was appointed the Executor of Rover Thomas’s estate.

Claims about elitism are often put forward when preferred provenance is invoked:

“The art market is a construct run by people who are elitists and believe that Aboriginal Art can only be bought from them and seek to disparage anyone else... who wants to work outside that system are labelled as carpetbaggers”.(Adrian Newstead quoted in, ‘Australia aims to protect \$149 million dollar industry’, *The Christian Science Monitor*, 7/6/2006).

D’Lan Davidson is a dealer who is today viewed as among the most elite. Adrian Newstead extolled him as “an honest broker” when he first joined Sotheby’s in 2010. D’lan Davidson has made good provenance the cornerstone of his business model, and he only accepts the gold standard for Rover Thomas; Mary Macha and Waringarri Arts.

On the provenance rating system, I developed in my PhD, works from these two sources are the benchmark, and rated A.

The provenance for Jabanunga (Rainbow Serpent)

Jabanunga (Rainbow Serpent) was painted at Warmun Traditional Arts, which is closely associated with Narrangunny Art Traders, a company run by Maxine Taylor and Terrence ‘Serge’ Brooks. They were living in the community at the invitation of the Warmun Community Council. Private dealers in Melbourne and Sydney and elsewhere were commissioning work from them including Kimberley Art in Melbourne and Adrian Newstead of Cooe Art and Christopher Hodges of Utopia Art Sydney. The commercial relationship between these dealers and Taylor and Brooks is not clear but it could be inferred that the dealers were in some way underwriting Warmun Traditional Artists. Adrian Newstead frequently comments on the “unfunded” nature of the enterprise, an implied contrast with government funded art centres. In his book *The Dealer is the Devil: An Insiders History of the Aboriginal Art Trade* (2014), Adrian Newstead states:

“They earned their living from a tithe collected on the sale of paintings that were created beneath the house” (p.30).

What is the tithe? What does he mean? How were they financed? Who paid them?

Taylor and Brooks were running a private enterprise, Warmun Traditional Arts as a de facto “art centre”. It was not a true art centre, meaning a community controlled, community owned art centre with transparent records and subject to public auditing.

Provenance as noted in the Valuers’ Reports

These reports submitted are inconsistent and in one case incomplete.

Brenda Colahan:

Warmun Traditional Arts
Narrangunny Art WA
Kimberley Art, Melbourne
Narrangunny Art WA
Private Collection, Melbourne (being Michael Blanche in June 2017)

Vivien Anderson:

Painted in Turkey Creek for Warmun Traditional Arts, in 1996.
This painting is accompanied by a photograph of Rover Thomas with the work just after its creation outside the Warmun Art Centre.
The painting is accompanied by a voice recording of the artist singing verses related to this part of the Krill Krill /Goorirr Goorirr ceremony.

Vivien Anderson stresses that she knows the artist and the community of Warmun well and she understands in particular, “the market’s preferred provenance” but then demonstrates that she does not, and contradicts her assertion by comparing The Jabanunga with three works of impeccable provenance, from Mary Macha and Waringarri Arts.

Vivien Anderson’s comment that she saw the work in WA in the Japingka storeroom in 1999 is almost incidental and is not incorporated in her provenance description, and she makes no claims about why it was there, as if she does not comprehend the chain of ownership.

Brenda Colahan's Valuer's Report is not informed by close contact with the artist or with the Warmun community, and is either lamentably uninformed as to who, and what she is talking about, or disingenuous, as if she does not understand provenance. She valorises the collector provenance over *the* provenance by equating a work bought by the Lavertys from Mary Macha with one owned by Lauraine Diggins sourced from Warmun Traditional Arts. She compares Jabanunga (Rainbow Serpent) to four Rover Thomas works, three of them from Mary Macha and the fourth, Bungullgi, 1989, was acquired by Vivien Anderson from Maxine Taylor and sold through Lauraine Diggins Gallery. This last painting was unquestionably painted by Rover Thomas but had stayed in the community and been displayed in the Warmun Roadhouse.

Both Anderson and Colahan completely elide the matter of provenance that is at the core of their valuations; Warmun Traditional Artists is not on par with work from Mary Macha; or Waringarri Arts; or a from the Community Collection in the Warmun Roadhouse; or an owl commissioned via Kim Akerman for Stephen Muecke. The works the valuers select to compare Jabanunga (Rainbow Serpent) with are all much smaller, much older (1985-1991) and with good provenance, a more accurate gauge would have been to compare the painting with some of the large works from 1995 provenanced to Kimberley Art from the Dandenongs Painting Camp.

Brenda Colahan does not seem to understand the importance of the chain of ownership. She makes no attempt to explain how the painting, on her account was in and out of the possession of Narrangunny Art Traders twice, and she appears not to know of the relationship between Warmun Traditional Arts and Narrangunny Art Traders, which is difficult to comprehend, given her working relationship with Cooee Art. It is surprising that she makes no mention of Adrian Newstead and Cooee given that, Colahan states that Cooee Gallery is one of her clients on her Linked In profile, where Adrian Newstead praises her fulsomely. It is possible this connection was why Brenda Colahan was asked to value the painting.

Adrian Newstead's role

What was the role of Adrian Newstead of Cooee Art in the production and sale of this painting? Adrian Newstead has stated this painting was painted while he was present at Warmun and it was offered much later in 2014, through Cooee Art.

Adrian Newstead has variously stated that Jabanunga (Rainbow Serpent) 1996 was painted at Warmun Traditional Arts, WA, and went immediately to an exhibition in Melbourne, and that he was present in Warmun during its creation; at another time, he says that since 1996 when it was painted until now, 2016, it has "been in a single owner collection". Given the comment by Vivien Anderson in her Valuer's Report, can it be inferred that the "Private Collection WA" referred to is Japingka? Finally on Adrian Newstead's website at another time, he says –

Provenance:

Warmun Traditional Arts, WA
Private Collection, WA
Cooee Gallery.

It appears this work was produced for Adrian Newstead, or if not explicitly for him, for an entity he was closely associated with, Warmun Traditional Arts/ Narrangunny Art Traders.

Was it commissioned separately by Adrian Newstead? At what point in the chain of provenance was it owned by Adrian Newstead/Cooee Art?

On Lauraine Diggins Fine Arts website c2019, Cooe Arts is not mentioned.

Provenance:

Warmun Traditional Arts, WA
Private Collection, WA.

Another Report

I understand that in addition to the two valuers' reports there was a third person who reviewed it, a third independent person - not an approved valuer. This is most unusual and does not seem consistent with CGP protocols which only provide for a third person, another approved valuer, to be called in, if the first two valuations are too far apart. So not only is it relevant to know who it was, it is also important to know why it was done, and how does it fit with in the CGP's published guidelines.

- a) Who was the third person and why were they consulted?
- b) What aspect(s) of the painting did they consider – the valuation, the provenance, the reputation of the individuals involved?
- c) By what criteria did they assess the proposed donation?

Omissions

The Press Release from the NMA does not mention Warmun Traditional Arts or Maxine Taylor and Terry Brooks.

Adrian Newstead is not mentioned either, as the apparent commissioner or as an owner of the painting, but he is mentioned at the end of the Press Release, as the source of a comment on the painting, which implies he is *the* expert on Rover Thomas.

Vivien Anderson in her Valuer's Report includes in her bona fides, that she held Rover Thomas' "first exhibition in Melbourne", at Deutscher Gertrude St in 1989, and fails to mention that it was with Joel Smoker and Waringarri Arts. She also does not mention that her familiarity with the Warmun community was because immediately after this, in 1990, in a private capacity ie. not for Deutscher Gertrude St Gallery, but as Fantome Bay Pty Ltd, Vivien Anderson went behind Waringarri Art Centre, and got paintings from Jack Britten and Freddie Timms, which she exhibited through two other private galleries in Melbourne and Sydney. Vivien Anderson's actions caused another Melbourne gallerist, (who had booked the earliest exhibition she could, with Waringarri Arts and had to wait until 1992), to lodge a complaint with ANCCA (Association of Northern and Central Aboriginal Art Centres). The actual details of Vivien Anderson's venture to explicitly bypass Waringarri Arts have only come out in recent years when works were sold on the Secondary market.

Vivien Anderson does not mention either that she bought two Rover Thomas works through Maxine Taylor from a reserved group of works that were regarded as the Community Collection and on display at the Warmun Roadhouse. She justified her dealings with a Stat. Dec. from Dallas Purdie of the Warmun Community Council that stated she had paid Rover Thomas.

One of these major paintings, Bungullgi, 1989 was later sold through Lauraine Diggins Fine Art accompanied by documentation, commissioned by Lauraine Diggins and written by Michael O'Farrell in 2002. The painting was later sold by Deutscher Menzies & Lawson Menzies in

2009. The other painting *Spinifex Rolls*, 1986 was sold through Lawson Menzies when Adrian Newstead was the Managing Director.

There is much that goes to her knowledge of Rover Thomas's work and close contact with Warmun that Vivien Anderson omits from her Valuers Report.

Experts not consulted

As far as I am aware, none of these twenty-one recognised independent experts were consulted:

- 1) Wally Caruana,
- 2) Kim Akerman,
- 3) Judith Ryan,
- 4) Robyn Sloggett,
- 5) Anne Brody,
- 6) John Stanton,
- 7) Hetti Perkins,
- 8) Brenda Croft,
- 9) Greer Adams,
- 10) Kevin Kelly,
- 11) Luke Taylor,
- 12) Henry Skerritt,
- 13) Stephen Gilchrist,
- 14) Margie West,
- 15) Seva Frangos,
- 16) Jacky Healy,
- 17) Michiel Dolk,
- 18) Georges Petitjean,
- 19) Tim Klingender,
- 20) D'Lan Davidson,
- 21) and myself.

When Lauraine Diggins published *A Myriad of Dreamings* in 1989, she relied on many of these experts above, and in relation to the East Kimberley she relied on Kim Akerman and Mary Macha. Lauraine Diggins did not rely on Adrian Newstead and Vivien Anderson. By contrast, in June 2019 Adrian Newstead in his Eulogy on Aboriginal Art at Lauraine Diggins' memorial service, spoke about her ground-breaking exhibition in 1989, *A Myriad of Dreamings* and did not mention Lauraine's great friend, Kim Akerman.

Similarly, the two Valuers' Reports, while apparently citing relevant texts manage nonetheless to erase their authors. Vivien Anderson mentions *Images of Power* and Judith Ryan but not Kim Akerman her co-author, and Brenda Colahan mentions Belinda Carrigan the editor of *I want to paint* but not Mary Macha or Kim Akerman, the main contributors.

Provenance Assessment

I developed the following *Checklist* – Source, Standing, Reliability, Expertise, Originality and Creativity, Governance and Financial - to consider when assessing provenance.
(See: SSS, PhD (2012). *Vindicating Rover Thomas*, Vol 1, Chapter 4, Methods & Evidence).

Source:

- S1. Closeness to the ground, nearness to origin, firsthand engagement
- S2. Length of continuous engagement, duration, and quality
- S3. Arrangements are public and candid, subject to community scrutiny and revision.

Standing:

- T1. Association with other reputable specialists and specialist institutions
- T2. Documented relationships with other individuals and organisations of good standing
- T3. Consistency of relations established and maintained
- T4. Credibility grows, it does not diminish over time and practice.

Reliability:

- R1. Commitment to the production of accurate verifiable knowledge and information
- R2. Quality of supporting documentation
- R3. Corroborates other information independently elicited.

Expertise:

- E1. Persons concerned are of good character
- E2. They are known for best practice in the field and recognised as such by their peers
- E3. Expertise is independently proven and reliably imputed not claimed
- E4. Pre-existing expertise is brought to bear, in the form of qualifications and or training in a relevant field.

Originality and creativity:

- O1. Contribution to the corpus of knowledge
- O2. Original published research

Governance and Financial:

- G1. Government funded organisations provide additional elements of oversight
- G2. Keeping and securing good records
- G3. Transparent records publicly scrutinized
- G4. Independent auditing financial and periodic peer review
- G5. Relations between organisations and entities are not secretive, contradictory or obfuscatory.

Comments:

On these 21 discrete points, my assessment is that Warmun Traditional Arts/ Narrangunny Art Traders meets these criteria on one and a half counts - S1 and partially on S2:

- S1. Closeness to the ground, nearness to origin, firsthand engagement and
- S2. length of continuous engagement, but fails on quality of engagement.

They also fail on the other nineteen points, and they fail comprehensively to demonstrate that:

- S3. Arrangements are public and candid subject to community scrutiny and revision
- T4. Credibility grows it does not diminish over time and practice
- E2. They are known for best practice in the field and recognised as such by their peers
- E3. Expertise is independently proven and reliably imputed not claimed
- E4. Pre-existing expertise is brought to bear, in the form of qualifications and or training in a relevant field
- G5. Relations between organisations and entities are not secretive, contradictory or obfuscatory.

Warmun Traditional Arts **comprehensively fails** on the detailed criteria related to – Standing, Reliability, Expertise, Originality, Governance and Financial. On my Provenance System Warmun Traditional Arts is rated C.

Integrity of the source

Questions arise about the integrity and character of Warmun Traditional Arts and its principals Maxine Taylor and Terry Brooks.

Irregularities in their appointment

Taylor and Brooks were first hired to run the Warmun Roadhouse, a community owned business that generated money for the community. Subsequently all cheque books and records were handed over to them and it became a private business, and they began selling paintings from the Warmun Roadhouse.

Slipshod certificates

It is evident in the ones I have seen that artists bios are jumbled and poorly written containing some facts mixed with fiction. This attitude to artist's life stories does not engender confidence in the attached painting stories.

Artists put under duress to sign exclusivity agreement

Elderly artists including Rover Thomas and Queenie McKenzie were pressured into signing agreements with Taylor and Brooks, which gave them, in the case of Rover Thomas:

“the exclusive right to promote Rover Thomas as they see fit and the sole right to earn commissions from the sale of all art and craftwork produced and to produce art and craftwork solely (for them) on a commercial basis.”

(See: Letter sent to Kevin Kelly at Waringarri Arts from Dan Mossenson, Phillips Fox Lawyers, Perth informing Kelly of the Exclusive Managing and Marketing Agent Agreement with Rover Thomas. Waringarri Art Centre Archives).

Both the supervisor of Walumba Hostel where Rover Thomas lived, and his Kununurra doctor, stated he was unfit to sign any contract. Dr Anne Ward said:

“I looked after him for the past five and a half years and he was not at all well. In fact, I don’t think he was really with it a lot of the time” (‘Doctor disputes agreement signing away artist’s rights, *The Age*, Gervase Greene, 9/6/1998).

Misrepresentation of who, what, they were

Maxine Taylor told Helen Read of Palya Art/ Didgeri Art Tours that they were registered with ATSIIC, Helen Read checked and found they were not. Read’s enquiries lead to the investigation by Warmun Community Council and to Taylor and Brooks being asked to leave Warmun and ultimately to the formation of Warmun Art Centre. (See: Jacky Healy, PhD, 2005, *A Fragile Thing: Marketing Remote Area Aboriginal Art*. University of Melbourne).

The myth that they were a community art centre

This furphy is perpetuated by Adrian Newstead who constantly claims they were the earlier version of Warmun Art Centre, and the only difference was lack of incorporation and the lack of a constitution, which sidesteps the salient differences, and interestingly their predecessor Warmun Community Arts *was* incorporated.

In Adrian Newstead’s *The Dealer is the Devil*, Maxine Taylor is listed six times in the index, Warmun Traditional Arts although mentioned a few times, does not feature at all in the Index, and Narrangunny Art Traders is only listed once. Instead, there are five mentions of Warmun Art Centre in the Index of the book, and these mostly refer to “the newly incorporated Warmun art centre” (sic). The lack of capitalisation is possibly an attempt to diminish the significance and blur the identity of Warmun Art Centre.

Taylor and Brooks called themselves at one point a “collective”, and Newstead in *The Dealer is the Devil* states they purchased all the art materials themselves as they were “unfunded” an implicit but irrelevant comparison with government funded art centres, that almost suggests Taylor and Brooks’ motives were altruistic.

Demeaning treatment of the artists

Freddie Timms said Maxine Taylor used to pay people by throwing bank notes out the window of the elevated Post Office house and calling out “Wak Wak”, meaning you crows come and pick up the feed. Timms added, “I think the old people didn’t like that” (‘Kimberley Painters in Legal Bind’, Simon Georgeff, *The Australian*, 14/8/1998).

Sowed discord between the artists and Waringarri Arts

... by promulgating stories that Kevin Kelly never came to Warmun and doesn’t care about you, and that the artists who worked in Kununurra were paid with no receipts nor paperwork. Adrian Newstead states in *The Dealer is the Devil* that Taylor and Brooks “fell into buying and selling the local artists because no-one else was doing it” (p.335) and it “saved the elderly artists the three-hour drive north” (p.361).

This is spurious as Waringarri Arts co-ordinators travelled to the artists and delivered primed canvases and afterwards collected them where they were living. At that time Waringarri Arts in Kununurra was looking after Rover Thomas and Kevin Kelly was visiting Warmun and Frog Hollow regularly. (See: Waringarri Archives, Stock Books, which show the dates when Kevin Kelly collected paintings from the artists at Turkey Creek/Warmun).

Rode the most successful artists hard and preyed on them

In order to get the most work from the artists, regardless of their health and failing capacities, to increase their output and advance their commercial model, the artists were pushed to work harder and faster. Freddie Timms who painted for Warmun Traditional Arts, but refused to sign any agreements and began querying some of the Warmun Council members said:

“She (Maxine) used to tell those old people, ‘You mob’ll get plenty of dollar, now paint more’. They were just going for their life. Most Aboriginal people down in Warmun rush too quick. They think \$500 the big money or even \$300” (‘Kimberley Painters in Legal Bind’, Simon Georgeff. *The Australian*, 14/8/1998).

In this context, Susan McCulloch commented:

“The sometimes vast gap in understanding of Western money matters and rights by many Aborigines means fairness depends much more on the ethics of those dealing directly with the artists” (‘Fairness depends on ethics’, *The Australian*, 14/8/1998).

Chain of Ownership

What was the artist, Rover Thomas paid?

Where are the receipts, the sales ledger, bank statements, the stock book?

Adrian Newstead stated the painting has been in a single owner collection from 1996 until 2014. Who was the owner? Where did they buy it? How much did they pay for it? Where has it been kept? On display? In storage?

Eighteen years is a long time so there must be some records of its life during that time.

Then after that point in 2014, according to some provenance accounts, it became the property of Cooe Art. How much was paid for it? Where are the invoices, bank statements to show this.?

In June 2017, the painting became the property of Lauraine Diggins. \$450,000 was apparently the asking price.

- a. How much was it sold for?
- b. What did the donor (or his late wife) pay for the work in June 2017?
- c. Where is the receipt or bank statement to verify this?
- d. Who did they buy it from?
- e. And who did they pay for the painting?

Provenance and Authenticity

The CGP Valuer's Report form category conflates provenance and authenticity and refers to provenance in the third degree, whereby an ordinary understanding of provenance is that it is a guarantee of authenticity.

In 2010 the Victorian Court Case, *Blackman & others V Gant & Another VSC 229*, Judge Peter Vickery in finding against the dealer, Peter Gant said that the act of valuing a painting entailed authenticating it. This ruling to my knowledge has not been tested or relied on, but it is a precedent worth considering.

Photographs

Notwithstanding the existence of photograph(s) of Rover Thomas with the work, *Jabanunga* (Rainbow Serpent), the painting may or may not be by Rover Thomas. The photographs, of which I have seen three, do not prove that Rover Thomas painted it, only that he and the painting were present at the same place for the purpose of the photograph(s) being taken.

In my PhD, I analysed a purported Rover Thomas painting that was sold with twenty-three accompanying photographs, five of which were doubles making eighteen distinct photographs. The eighteen photographs showed eight moments in time, however two of those moments were when the painting was completed, and three moments were devoted to the quickest stage of painting: the white dotting. The most I believe you could safely infer from those photographs is that Rover Thomas *might have applied the white dots*. None of which proved Rover Thomas had painted the work in question, only that he and that work had been present together in the same place. (See: SSS, PhD. (2012). *Vindicating Rover Thomas*. Vol 2, Appendix P: Photographs as Verification).

In his book, Adrian Newstead presents a montage of six photographs of Rover Thomas with six different large paintings he is purported to have made six months earlier at The Dandenongs Painting Camp. The photographs are put forward as if they are evidence of the authenticity of the paintings, were taken I presume, by Neil McLeod, and in my opinion all they show is that Rover Thomas was present at Neil McLeod's Studio. (See: *The Dealer is the Devil*, p.333).

Audio Recordings

I have not heard the sound recordings of Rover Thomas singing the story which accompany the work. As it is well known that there are recordings of Rover Thomas singing the Goorirr Goorirr ceremony, one of which is in the NMA collection already, the claim made that he was singing while painting about the painting, is open to question.

- a) Is there any verifiable indication to prove when the recording was made?
- b) Has it been transcribed?
- c) Where relevant has it been translated by a linguist?
- d) Does that transcription and translation reveal what Rover Thomas is singing about?

In respect to this painting, I do not think the existence of a recording of Rover Thomas singing is likely to be of any probative value.

There is an apparent plethora of documentation; more than three photographs of the artist with the work and a voice recording, but all of it essentially purports to represent the final moment(s) of the work's execution, and it appears there is nothing that can be independently corroborated.

Is there any independent corroboration of where, when, who painted Jabanunga (Rainbow Serpent)?

As the provenance in the first degree is problematic, any documents generated from that source are likely to be unreliable.

The Timing

The painting was purportedly made in March 1996 and soon after, according to Adrian Newstead, transported from Warmun to a Melbourne gallery for exhibition.

I have found no record of its exhibition in Melbourne and none of the provenance descriptions put forward by Anderson, Colahan, Newstead, or Diggins mention any exhibition in Melbourne.

Despite Vivien Anderson's mention of it being in the Japingka storeroom in Fremantle, in 1999, nothing further is said on this matter, and that moment or location is not noted explicitly in any of provenance sequences offered by Vivien Anderson, Brenda Colahan, Adrian Newstead or Lauraine Diggins.

The painting appeared apparently for the first time, illustrated in Adrian Newstead's book, *The Dealer is the Devil* in 2014 and at the same time in an exhibition/sale preview with Cooe Art at Fireworks Gallery in Brisbane.

This time lag of eighteen years invites questions that should be accounted for in the provenance record, or chain of ownership, which is confusing and incomplete in all iterations.

The Significance

In her Valuer's Report, Vivien Anderson calls The Jabanunga, Rover Thomas's "magnum opus" and Adrian Newstead in his essay for Fireworks Gallery in 2014, states it is, "one of the greatest Masterpieces ever created during the modern Aboriginal Art movement". The donor Michael Blanche talked about, "recognising its power, its story, its importance for the nation" and called it "a Masterwork". Art critic John McDonald, in the SMH said it is, "a large complex work that deals with themes of cosmic destruction and restitution, it's the kind of work that instantly becomes the focal point of the permanent collection". The NMA chair, the Hon Warwick Smith AO said that visitors will be "entranced by this magnificent painting and the important cultural story it depicts". Margo Neale said, "This master work celebrates Indigenous knowledge, the contemporary relevance of ancestral stories and furthers our understanding of the dreaming ... It is portentously powerful". Finally, in the NMA Press Release, Adrian Newstead said, "Rover Thomas is, according to almost every empirical measure, the most influential Aboriginal artist in the history of this movement".

There is no shortage of high praise for the work, however none of the praise comes from anyone outside this close circle.

The Value

The painting has been valued at 1.2 million dollars. This seems excessive given it does not have a good provenance and the fact that in 2016 it was offered by Cooe at 450,000 dollars. It is difficult to account for the value almost tripling in six years.

The painting's monetary value has never to my knowledge been tested on the auction market.

One of the valuer's remarks that had the painting been valued by size alone, she would have valued it at \$1.5-\$2 million.

By contrast, if it is compared to a work from current Cooe Art stock with the same provenance, but of a significantly smaller size. (60 x 90), a work by Rover Thomas, *The Eaglehawk and Crow*, 1996, "Natural earth pigments on Belgian linen", offered for \$30,000. A painting one sixth the size of this one, albeit with a less saleable story. \$30,000 x 6, would make a value for this work of \$180,000.

Or consider another work, Rover Thomas, *Bubanya Billabong*, 1996, Warmun Traditional Arts, (120 x120) offered at auction by Shapiro on 26/5/2020. Est.\$20-30,000. Certainly, this painting is larger than *The Eaglehawk and Crow*, but nowhere near as big as *Jabanunga* (Rainbow Serpent), and with not as significant a story, but its preauction estimate is not a lot of money, compared to \$1.2 million.

The Painting

The work is extremely large (180 x 270) bigger than any other works by this artist. Six months earlier at the Dandenongs Painting Camp, Rover Thomas purportedly completed 6 large works- (6 x 8ft ie 180 x 250), so this work is even bigger. And while this might be a useful comparison, the danger is in using a false precedent.

The works created in this Painting Camp are problematic themselves, so cannot safely be used as basis for comparison – as to anything – the size of works, the number of works Rover Thomas could paint in a given period of time, and the compromises of his ability due to this deteriorating state of health.

To say Rover Thomas could comfortably produce a work as large and finely detailed as this because he had completed the vast number of paintings Adrian Newstead says he had made at the Dandenongs Camp six months beforehand, is fallacious reasoning.

When preparing for an exhibition my informants, Joel Smoker, Kevin Kelly and Leon Stainer, who had watched Rover Thomas paint, said he could complete an average size work, "3ft x 3ft in one day allowing for drying time". (See: SSS, PhD, 2012, Vol.1. Chapter 3, *From Dreamer to Painter: How quickly did he paint?* p.76)

This painting is more than four times that size, so it may have taken 4-5 days to paint. There is no asserted time frame to query here. But it does leave open, at what point, moment, day, in the creation of the painting is Adrian Newstead saying he was present - at the very end?

It is apparently and by all accounts highly finished and in excellent condition, which of itself invites questions. At this time in Thomas' life, given his health, in particular his mobility and concentration issues, I do not believe, Rover Thomas could execute a work on this scale and to this level of refinement, unaided. To my knowledge, there is no mention in any of the supporting material, of Rover Thomas being assisted by another person(s).

The Subject

According to 'Roba Painting Subjects' in the Waringarri Archives, there are no works painted for Waringarri Arts on this subject: the Rainbow Serpent entering the ground near Mt Newman. The paintings Rover Thomas painted for Waringarri Arts about Mt Newman/Newman are almost all secular and show the mine and the process of mining, except for the mention of kangaroo fat at the site.

The Mt Newman/Newman paintings by Rover Thomas for Waringarri Arts, comprise some five works- APO 586, APO612, APO 694, APO739 and APO783, purchased separately between the beginning of August 1995 and May 1996, suggesting that the trip to Newman took place before August 1995 and most likely in July 1995.

'Roba Painting Subjects', p.14. Mt Newman Mine: Port Headland, Mt Newman mine:

"The artist visited this mine while travelling through country. During the visit he went to the top of the hill to see the mining operations and made paintings showing his impressions of the hill and the mine pit".

Three of the five paintings are diagrams of operations and feature mine pits, mine tailings (represented as red dust) and gullies. While the other two works are site maps showing the hill where the mine is located, and the kangaroo fat left when the kangaroo was killed in the Dreamtime, "Today the miners are digging where the fat lies buried". (See: Waringarri Arts, Artists Certificates: Rover Thomas, Waringarri Arts Archive).

None of the Mt Newman/Newman paintings for Waringarri Arts refer to the Rainbow Serpent.

There are a number of Rover Thomas works that refer to a snake responsible for Cyclone Tracy and related to the Goorirr Goorirr. Many of them painted for Mary Macha beginning with Wungurr is the name for that snake, 1983 in the collection of the NGA. Juntarkal Rainbow Serpent, 1985 shows a fat sinuous snake with two eyes and no horns, while Lingurr: Bush Snake, 1987 is depicted as a fat patterned snake with a head and two eyes, no horns and described as having Djunurra skin (not Jabanunga - a different skin name) travelling from Turkey Creek to Alice Springs and responsible for Cyclone Tracy. Another Untitled, (The Serpents – Juntarkal and Wungurr), 1987 depicts two entwined snakes, fat bodied with a simplified head and eyes and no horns. There are other snakes by Rover Thomas including one painted for the Ngalangangpum School as a teaching aid, and Gulbal-Snake, 1989 painted for Waringarri Arts. All of these snakes by Rover Thomas are consistent in their depiction; a big fat body with rudimentary facial features and no trailing horns.

In the *Yiribana* catalogue for the AGNSW when she is writing about another Rover Thomas painting ‘Ngarin Janu’, Margo Neale says:

“Cyclone Tracy towards the end of its journey, is transmogrified into one of the Rainbow snakes - Wungurr, Ungudd or Juntarkal”, (See: cited in, Suzanne Spinner, ‘Three Certificates are not enough’, *Indigenous Archives*, The Making and Unmaking of Aboriginal Art, ed Darren Jorgenson & Ian Mclean, UWA publishing, 2017, WA).

Margo Neale however, does not mention the subject of this painting, Jabanunga or Gooriialla, the Rainbow Serpent, which is surprising as her list sounds comprehensive. I have found no other reference in Rover Thomas’ oeuvre to the snake/serpent named as Jabanunga or Gooriialla.

Rover Thomas did not usually depict the snake from the Goorirr Goorirr ceremony on boards carried by the dancers because there was no need to, as the snake in question was a such a major actor in the drama, he was represented as a three-dimensional puppet, a large painted snake carried on the dancer’s shoulders made from sewn cloth stuffed with grass.

Contrivance and Contradictory style markers

Jabanunga (Rainbow Serpent) has all the marks of painting to order, a forced subject matter with an excess of saleable reference points.

When I first read the story of the painting, it did not ring true. There were too many significant hooks, the Rainbow Serpent, the finale of the Goorirr Goorirr, the Big Rain, and name checking both Gina Rinehart and Twiggy Forrest, that leapt out. Who was the intended mark/market for this painting – mining magnates?

It looks contrived; the scale of the painting, the excessively symmetrical/geometrical arrangement and the small, fine, neat dotting does not correspond to Rover Thomas’ style in general, nor to his late style, which was affected by his capacities and health.

Contradictory style markers - the painting features five double circles or concentric circles that are neat, regular, and discrete, and such symbols are rarely if ever seen in a Rover Thomas painting. In his paintings, single circles usually represent waterholes or lakes. In general Rover Thomas rarely used concentric circles to represent sites or geographic features. He only used a concentric circle in *one* of his well-provenanced representations of Wolfe Creek Crater, although there are many problematic paintings of Wolfe Creek Crater employing this concentric circle motif.

These concentric circles are variously described as representing:

- 1) the “disembodied entrails and vital organs” (of the snake), Warmun Traditional Arts Certificate, 1996
- 2) “the concentric circles represent his vital organs”, p.336 *The Dealer is the Devil*, 2014
- 3) In 2016, they represented his “eyes, vital organs and specific sites in the Pilbara”.
- 4) The NMA Press Release says they are “topographic features in the vast plains of the Pilbara as well as huge mining pits”.

I have copies of four random certificates issued by Warmun Traditional Arts in 1996 for Rover Thomas works which have been sent on to me by Waringarri Arts, when buyers have asked for a “better art centre certificate”. All have a garbled artists biographies and rudimentary artwork stories, only one has a drawn schematic diagram that purports to represent the painting, and some have a photograph of Rover with the work propped up in front of him.

In my opinion, the only works that are at all comparable in style and symbolism to Rover Thomas’ oeuvre are in the Waringarri Arts archives and painted the year before, in 1995.

They are APO 405, Killarney Country, (120 x 90) and APO 612, Mt Newman Mine, (110 x 70). The accompanying certificate for APO 405 attributes it to Rover Thomas with the assistance of Sandra Malas/Malay. APO 405 was sold to Cooee Aboriginal Art on 19/3/1995. To my knowledge this painting has not appeared on secondary market. APO 612 is attributed to Rover Thomas but looks wrong and looks most like APO 405, and in my opinion it should be (re-)attributed to Sandra Malay (and Rover Thomas). She is described as a young Gija woman, who was associated with Rover Thomas and “working with him”, and during this last phase of his painting life, she is a recurrent presence in the Waringarri artwork certificates. I draw attention to APO 612, ‘Mt Newman Mine’ because of its subject matter. (See: Waringarri Arts, Rover Thomas: artwork certificates, Waringarri Archives).

The Story

The story of Jabanunga (Rainbow Serpent) is not accompanied by any form of diagram or numerical notation as to symbols or shapes depicted, which would be usual in a Certificate from Mary Macha or Waringarri Arts.

There are at least four versions of the accompanying story:

- 1) The first is on the certificate from Warmun Traditional Arts.
- 2) The second is short essay by Adrian Newstead published in 2014 when the work was shown in a Cooee exhibition at Fireworks Gallery in Brisbane, which makes no mention of the information from the certificate, however it does introduce some highly contested *facts*, that Rover Thomas began painting in 1981; a question addressed in detail in my Phd, where I concluded, he did not begin painting until 1983 (See: SSS, PhD. 2012, Vol.1. Chapter 3, From Dreamer to Painter: When did Rover Thomas start painting? p.50). Newstead also states that prior to the establishment of Waringarri Arts (ie before 1985/6) Rover Thomas’ work was collected and sold primarily by Mary Macha and “independent field worker and photographer” Neil McLeod. Another contested matter addressed by my PhD, my conclusion was that Neil McLeod did not collect Rover Thomas before 1992/3, and that the works attributed to Rover Thomas as sourced by Neil McLeod before then, are all extremely problematic (See: SSS, PhD, 2012, Vol 1, Chapter 9, Early Works that appear late. pp192-228).
- 3) The third is an essay also by Newstead in 2016, when the work was in an exhibition of work from Cooee at Australian Galleries, Sydney. Again it is brief, but significantly longer and more elaborated than the certificate and introduces a new interpretation; “the trail of the (Rainbow Serpent’s) horns manifest as a mountain range”.
- 4) The final version was apparently produced by Adrian Newstead for Lauraine Diggins in 2017, when the work entered her collection. It is lengthy and incorporates much of what has already been written plus much more. This essay is quoted at great length by Brenda Colahan in her Valuer’s Report.

In it, Adrian Newstead states there are, “contributions by Maxine Taylor and Terry Brooks plus excerpts Mike O’Ferrall (sic) (2002)”, however neither are quoted, nor is there any indication where, when, and what they said.

This is relevant because Michael O’Farrell, who was the curator of the AGWA 1990 Venice Biennale exhibition featuring Rover Thomas and Trevor Nickolls, is a person of standing and was an expert on Rover Thomas. He died in 2013. He was also closely associated with Vivien Anderson through his championing of Trevor Nickolls, whom Anderson represented.

It is a matter of some interest what Michael O’Farrell said about this painting. However, I believe that the essay Adrian Newstead must be referring to, is the one written by Michael O’Farrell in 2002 for Lauraine Diggins about the Rover Thomas painting, Bungullgi, 1989, which Vivien Anderson acquired by way of Maxine Taylor from the Warmun Roadhouse in 1996 and sold through Lauraine Diggins Fine Art.

The Certificate

It is well known that if you are in possession of an Art Centre certificate for an artwork, that is all you need to assert the authenticity of the artwork.

In the chapter from *Indigenous Archives*, ‘Three Certificates are not enough’, I describe how Adrian Newstead attempted to get Warmun Art Centre to issue a certificate of authenticity for a Rover Thomas painting from Warmun Traditional Artists. They refused.

Newstead already had one from Warmun Traditional Arts, another from Kimberley Art and a third from his own business, Cooe Art but in consigning the painting for a Lawson Menzies auction, Adrian Newstead knew that an Art Centre certificate gave it the cache of a provenance that was valued by the market.

On her website, Lauraine Diggins under the heading ‘Warmun Art’, subheading, ‘Art and the Art Centre’, states very clearly that the sources for art from Warmun are Waringarri Arts from 1985, and Warmun Art Centre from 1998:

“... in direct response to the pressure by a number of Warmun painters, particularly Queenie McKenzie, the Warmun Art Centre was established at the old Turkey Creek Post Office and Telegraph Station in 1998 and supported by ANKAAA ...”(See: Website Lauraine Diggins Fine Art, <https://www.diggins.com.au/artwork/aboriginal-main/warmun-turkey-creek/>).

Diggins makes no mention of Warmun Traditional Arts, as if she was not aware of its existence or perhaps, she did not want to taint her reputation and invite the adverse inference that she might deal with anyone but the accredited art centres.

Lauraine Diggins consulted me in March 2019, and I advised her very clearly that a work with this provenance was not suitable as a tax deductible donation to a publicly funded institution. The Rover Thomas work that she consulted me about was never named, nor the institution it might be donated to, nor even the owner of the work, but she knew this was not “her good Rover” and said so. It is likely she shared my opinion of the painting’s provenance with her husband, the donor.

The First Certificate

The work appears to have been painted for Warmun Traditional Arts as it bears a catalogue number in the form RT0000, dated 26/3/96 and is RT001, indicating the first painting for that year. However, a certificate with the catalogue number RT and dated 3/1/96 was previously submitted to me, for verification, which does raise the question, was this the first painting of 1996?

Is this certificate the first or only certificate for Jabanunga (Rainbow Serpent)?

The Warmun Traditional Arts certificate that accompanies the painting is anomalous, when compared to five other certificates sighted from this source for 1996 Rover Thomas works:

- 1) The layout and typography are very different, contemporary, the others are in a dated font.
- 2) The biographical information is more accurate- Born at Well 33 (not Three Wells or Thirty-Three Wells).
- 3) Boxes or categories, which list the age of the artist and the price of the painting are missing on this certificate.
- 4) The description of the Medium is more detailed, “natural ochres on linen, synthetic binder” compared to “ochre on canvas”.
- 5) There is no disclaimer in the bottom right-hand box saying, “Copyright for both painting and text remains with Warmun Artists and may not be reproduced without permission”. This is a reference either to the Exclusivity Agreement Rover Thomas had signed with Maxine Taylor, or a remnant of the certificate format that preceded it, which was developed by Kimberley Art for Warmun Community Arts Incorporated.
- 6) There are three attached photographs, however two of them are clearly taken later than the first photograph, which show Rover Thomas standing beside the painting. In the other two photographs he is wearing different clothes and sitting down – possibly because he can no longer stand - in one he is with a man and women, whom I take to be collectors, who are considering buying his work. It is unlikely that collectors came through in late March, rather the dried grass and dusty ground they are sitting on suggests the Dry season, the tourist season. No information about them or explanation for their presence is offered on the certificate or elsewhere to my knowledge.
- 7) Vivien Anderson in her Valuer’s Report names the painting as, “**The** Jabanunga” and says she saw “**a** photograph of the artist with the completed work”. From this I infer, she saw an earlier iteration of the Warmun Traditional Arts certificate, when the painting had a different title and only the first photograph attached.

Later it appears that a new certificate with the new title and two extra photographs was manufactured; tidied up, fleshed out and generally massaged to enhance the painting’s appeal and prospects of sale.

In my opinion, it is likely, the Certificate from Warmun Traditional Arts for Jabanunga (Rainbow Serpent) was created when The Prospectus was published by Cooee Art in 2015.

The existence of so many anomalies - more than seven - raises questions about the intentions of the parties and the competence of the original certificate issuer and strengthens the argument that documents from this source are inconsistent and unreliable, and that the full story has not been revealed.

Relationships between the parties

The closeness of the parties was apparent in June 2019 at the commemorative event at the NGV to celebrate Lauraine Diggins' life.

Both Adrian Newstead and Margo Neale were prominent. Margo Neale did the Welcome to Country and Adrian Newstead delivered the eulogy relating to Diggins' involvement in Aboriginal Art. I assume Vivien Anderson was also present but cannot recall seeing her.

In the acknowledgments for *The Dealer is the Devil* in 2014, it is surprising that Adrian Newstead does not mention Lauraine Diggins, however he does thank Kevin Kelly, and Vivien Anderson is especially thanked for reading the final manuscript. She is also quoted on the back cover blurb, "Adrian Newstead's book cuts its course through the Indigenous art world like a big river across the land ..."

The commercial relationship between Lauraine Diggins and Vivien Anderson in respect to the Warmun Roadhouse painting is curious, but suggests Vivien Anderson wanted to sell the work while distancing herself from it, and Lauraine Diggins was willing to assist her.

In the chapter from *Indigenous Archives*, 'Three certificates are not enough', I discuss Margo Neale's catalogue for *Yiribana* at the AGNSW. In my opinion, her entry on the Rover Thomas painting, Ngarin Janu created the preconditions for passing off problematic works from Warmun Traditional Artists marketed by Christopher Hodges, and for Neil Mcleod to create a fabricated painting from false information apparently *planted* by Margo Neale.

From her time, at the QLD Art Gallery, Margo Neale has had a long-standing friendship/relationship with Adrian Newstead and Michael Eather of Fireworks gallery, where the painting was first exhibited. Brenda Colahan Fine Arts is also associated with Christopher Hodges and presented an exhibition, in collaboration with Utopia Art Sydney in 2018.

Art Consulting Association of Australia (ACAA) was incorporated in 2006, at which point its founder Michael Reid left, when it was swamped with former Lawson Menzies staff and others including Brenda Colahan. Adrian Newstead, the former Managing Director of Lawson Menzies joined in 2010, eventually making five of twelve members ex Lawson Menzies personnel with Newstead on the executive. Michael Blanche joined soon after in 2011. ACAA now has some forty-six members, including Seva Frangos and Greer Adams, who both have particular expertise in East Kimberley Art, and were not previously associated with Lawson Menzies. Given that they are fellow members of ACCA, it is surprising that it appears neither Seva Frangos nor Greer Adams were consulted about this painting.

Adrian Newstead and Brenda Colahan are also members of ART TRUST, formed by Greg Nazvanov in 2006, an investment business focused on Indigenous Art under the Motto: Wealth by Passion. The founding group of ART TRUST was the twelve original members of ACAA. As well as belonging to ACAA, Brenda Colahan FineArts, Adrian Newstead Cooee Art, Fireworks Gallery in Brisbane, Japingka in Fremantle, and Michael Blanche of Lauraine Diggins Art belong to the Aboriginal Arts Association of Australia, an organisation created by Adrian Newstead.

There is evidence of a long-standing association between SMH art critic, John McDonald and Adrian Newstead. In a 2007 article McDonald and Newstead tag team to tell the Warmun painting story, while leaving out anything inconvenient. John McDonald does not mention Mary Macha or Warmun Traditional Arts but does link Warmun Art Centre with the Turkey Creek Post Office implying a continuity. Adrian Newstead mentions Freddie Timms going to Melbourne with Rover Thomas in 1995 “to produce a large body of work” but does not mention where; to Neil McLeod’s Studio in the Dandenongs. Newstead says as a result Freddie Timms was offered an exhibition with Frank Watters in Sydney. This is specious and disingenuous and leaves out Freddie Timms’ dissatisfaction with the way he was treated by Kimberley Art and the role played by Tony Oliver in the Watters’ show. Adrian Newstead concludes that the second wave of Warmun painters are somewhat lacking and fails to mention that Timms and Oliver created Jirrawun Arts, which was booming then. Neither Tony Oliver or Jirrawun Arts are mentioned in the article. It has all the marks of an article written to order. (‘Indigenous Artists’ vision splendid’, Stephen Lacey, *The Sun-Herald*, 15/6/2007).

In February this year, John McDonald wrote a uniquely laudatory article in the SMH announcing the donation of Jabanunga (Rainbow Serpent). Unique, because it appears no other major newspaper - *The Age*, *The Australian Financial Review*, *The West Australian* or *The Saturday Paper* - was sent the press release from the NMA, which is surprising as it was clearly a story of national interest.

In the press coverage of the NMA donation, Margo Neale is described as “instrumental” in the acquisition of Jabanunga (Rainbow Serpent), and if that is so, then in my opinion, the acquisition was *orchestrated* by Adrian Newstead, only he appears reluctant to say so.

Considering the number of experts I noted earlier, this group – Margo Neale, Adrian Newstead, Vivien Anderson, Brenda Colahan, Lauraine Diggins, Michael Blanche and John McDonald is quite small and narrow, and Brenda Colahan would not be considered an expert on Rover Thomas. Since the publication of the article on March 11 in *The Australian Financial Review* by Gabriella Coslovich, various experts in the field have contacted me to express their support at our raising the issue and their own concerns about the issue(s) with Rover Thomas work in particular and with the CGP in respect to Indigenous Art in general.

Not Just a white thing

The term “Aboriginal Art” was coined by Sothebys auction house in Australia, and it is used to describe Indigenous Art moving through the secondary or auction market.

I take it as read that Richard Bell was right when he said, “Aboriginal Art is a White Thing” and that the campaign “Fake Art Harms Culture” was an imperative initiative. Art Authentication has become an essential plank in the protection and maintenance of Indigenous Culture.

My focus is on the East Kimberley and Rover Thomas, whose work figures prominently in the secondary market. A significant proportion of his oeuvre is problematic, meaning the works themselves and how they came into being and arrived on the secondary market raises questions about their likely authenticity.

Rather than only being a problem for the (white) person who bought them believing them to be something they are not; they constitute an impediment to everyone understanding and valuing Indigenous cultural heritage. The (continued) existence of these false works does a great harm to Indigenous culture, heritage, and people. Their existence must be taken seriously by us all, a white academic like myself, the artist's family, the communities of origin and the two main art centres Rover Thomas was associated with, Waringarri Arts and Warmun Art centre.

It remains a live concern that the good name, and transparent records, of the Warmun Art Centre is invoked by these other short-lived entities, to disguise the actual, very unclear and often exploitative nature of their relationship with the artists. By blurring provenance descriptors, entities such as Warmun Traditional Arts continue to trade off the good and sound reputation that Warmun Art Centre and the art centre system in general, has built over many decades.

Ethical provenance

What is an Art Centre? It is useful to think in terms of necessary and sufficient conditions. These entities operating in Warmun at the time fulfilled criteria that is necessary for an art centre; they operated in the community, they bought and sold art from the community, money was paid to artists, artwork certificates were issued, people were looked after, and exhibitions were arranged.

They did not however meet the critical criteria; community ownership and community control, accuracy of records, transparency of financial arrangements and records and accountability to regulatory third parties. Art and Craft Centres are defined as:

organisations operating in remote Australia owned and controlled by aboriginal people. Their principal activity is facilitating the production and marketing of art and craft. A centre may be independently incorporated or auspiced by an Aboriginal company or incorporated association (See: Flick Wright, (1999), 'The Art & Craft Centre Story', Vol One Report, p. ix).

Art centres are important because they are "often the only source of externally generated income in remote communities" and they are "special cases" and "not conventional businesses" (Wright, p.5) because they are "directly accountable to their stakeholders" (p.154). Compared to private dealers, where there is "no transparency", the art centre "has a set of responsibilities to the artists, the executive, and the Registrar of Corporations" (p.124).

Art centres are incorporated under the Federal Aboriginal Councils and Associations Act (1974) and "as such members have a range of legal responsibilities and moral obligation which have a bearing on issues of authenticity". As Wright argues dealers pose a "significant problem" for art centres, even "some of the most successful ones" because:

Dealers operate solely for their own benefit. They come and go and are not required to put any resources into the community; they usually target the established artists and put nothing into training or mentoring emerging artists; they are not obliged or expected to maintain transparent transaction records and have no accountability (p.126) ... Such dealers undermine the financial success of the centres. They are able to capitalise at no cost to themselves, on the work centres have done to promote local artists, and frequently enter into exploitative relationships with artists by taking advantage of their poor literacy and numeracy skills (p.179).

Art Centres are the honest brokers and the disinterested parties in the Aboriginal Art world. They usually are the best informed and able to call on the widest range of resources to support the artists, from top curators to carry out research and Land Councils and experts such as linguists and anthropologists to inform and build their records.

To eschew ethical provenance and not seek the best possible provenance and choose to support entities explicitly created to bypass and go behind the art centres undermines the value of community owned and community-controlled art centres which in turn are supported by government funding. Such practices also impugn the integrity of reputable dealers who provide reliable and transparent records.

The senior artists at Warmun were distressed by their treatment by Taylor and Brooks and threw their weight behind the new community owned art centre. It appears that people at Warmun had been happy with the deals they had, until the issue of the exclusive agreement blew up. It is arguable that either they did not fully appreciate the bigger picture for their art or their community, or they did not like being told what was in their interest, or none of that mattered, because at the time, in the moment, they simply needed the money and or the incentives that were being offered.

It cannot be emphasised enough that the primary market for Indigenous art is vulnerable to exploitation; artists are poor, and often lack basic literacy and numeracy skills. That is the very reason the art centre system was set up - to protect artists from being preyed upon by unscrupulous individuals and to ensure income received was fair and distributed for the benefit of the whole community. As there are no known transparent records available of Warmun Traditional Arts, we have no idea how the artists were paid.

Spurious, self-serving claims are regularly advanced that preferred provenance interferes with an artist's agency to choose whom they wish to paint for, to be so-called *free agents*. As Hetti Perkins said to the Senate Enquiry:

We take issue with those people that claim Aboriginal artists should be given free choice and that to do anything otherwise is racist and discriminatory. We feel that it is racist and discriminatory to presume artists particularly in the more remote areas or the more disadvantaged areas are able to make free choices, given their circumstances (See:Hetti Perkins, 2007, p.35).

Conclusion

On the national stage we all must ensure that an artist's legacy is what we believe it to be. False knowledge must be exposed, and alternative facts corrected, so that what is represented in institutions owned by us all, are what they purport to be, true examples of living Indigenous culture.

The general public visits such institutions and expects to be presented with a true representation of Aboriginal art, fairly traded and ethically obtained. To accept works of unsafe provenance is to risk corrupting the oeuvre of the artist, and consequently the reputation of the institution as a keeper of the public record.

It is the duty and responsibility of a publicly funded institution to collect works that have good provenance, and they should always aim for the best provenance available. These works become the exemplars against which the veracity, aesthetic quality, stylistic features, mythological representations, accounts of Aboriginal life and history and the progression of an artist's style may be dated, and against them, other works may be fairly compared and properly judged.

The NMA should commit to do no less than the NGA, and I would argue it is charged with an even greater duty to honour Indigenous Cultural heritage by "building an ethical approach to managing our collection" and taking seriously, "the ethical and legal collection of works".

In my expert opinion, a painting by Rover Thomas with this provenance should never be accepted by a public art gallery or museum, either as an outright donation or under the Cultural Gifts Programme, where the donor accrues a tax benefit from the donation.

This Dossier has been prepared to assist the NMA Investigation being conducted by Stephanie Bull and submitted on that basis. Any questions arising from it, I am happy to answer in writing in a timely fashion, but only about the wider issues raised by the provenance of the painting and not about any of the issues canvassed by CPM Reviews in their "contained investigation", in which I declined to participate.

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Questions arising that need to be addressed

In reference to Warmun Traditional Arts, Adrian Newstead says they were paid by a tithé:

- a) What is the tithé?
- b) How were they financed?
- c) Who paid them?

Given the comment by Vivien Anderson in her Valuer's Report, can it be inferred that the "Private Collection WA" referred to is Japingka?

Was the painting commissioned separately by Adrian Newstead?
At what point in the chain of provenance was it owned by Adrian Newstead/Coee Art?

Who was the third person and why were they consulted?
What aspect(s) of the painting did they consider – the valuation, the provenance, the reputation of the individuals involved?
By what criteria did they assess the proposed donation?

What was the artist, Rover Thomas paid?
Where are the receipts, the sales ledger, bank statements, the stock book?

The Single owner:

- a) Who was the owner?
- b) Where did they buy it?
- c) How much did they pay for it?
- d) Where has it been kept? On display? In storage?

Coee Art:

- a) How much was paid for it?
- b) Where are the invoices, bank statements to show this.?
- c) What did the donor (or his late wife) pay for the work in June 2017?
- d) Where is the receipt or bank statement to verify this?
- e) Who did they buy it from?
- f) And who did they pay for the painting?

The Audio Recording:

- a) Is there any verifiable indication to prove when the recording was made?
- b) Has it been transcribed? Where relevant has it been translated by a linguist?
- c) Does that transcription and translation reveal what Rover Thomas is singing about?

Is there any independent corroboration of where, when, who painted Jabanunga (Rainbow Serpent)?

At what point, moment, day, in the creation of the painting is Adrian Newstead saying he was present - at the very end?

Did Michael O'Farrell actually say anything, about this painting (in 2002)?

Is this certificate the first or only certificate for Jabanunga (Rainbow Serpent)?

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