

ABORIGINAL ART ASSOCIATION OF AUSTRALIA LTD

ABORIGINAL ART CODE

1. Background to and Purpose of the Aboriginal Art Code

- 1.1 In response to the findings of the Senate Inquiry: Indigenous Art Securing the Future, the Aboriginal Art Association of Australia (AAAA) has developed the Aboriginal Art Code (Code).
- 1.2 Adoption of the Code is compulsory for Members of the AAAA and is administered by the AAAA.
- 1.3 The Code provides Members of the AAAA with binding rules, guidelines and structures to be observed in their dealings with Aboriginal artists. These rules, guidelines and structures are designed to provide a workable and equitable environment to operate in for Members and Artists.
- 1.4 Member's obligations are in addition to other ethical and business practice requirements set out in the Constitution.

2. General Standards of Conduct for Members

2.1 Members Must Act Honestly

Members must at all times act fairly, honestly, professionally and in good conscience when dealing with an Artist, whether they are dealing directly with the Artist or dealing with the Artist through an Artist's Representative. Examples of conduct that would not meet the required standard include, but are not limited to:

- (a) unfair or unreasonable conduct;
- (b) undue pressure or influence, including threats;
- (c) not acting in good faith;
- (d) paying an Artist by means of alcohol or drugs;
- (e) unfairly taking advantage of, or exploiting, an Artist; and
- (f) paying or agreeing to pay an Artist an amount or other consideration for the Artist's Artwork that is, in all the circumstances, not a fair or equitable amount or is otherwise against good conscience.

2.2 No Misleading or Deceptive Conduct

Members must not make false representations or engage in conduct which constitutes misleading or deceptive conduct or conduct that is likely to mislead or deceive, when dealing with a person in connection with Artwork.

Examples of misleading or deceptive conduct include, but are not limited to, a Member engaging in misleading or deceptive conduct about any of the following matters:

- (a) the authenticity or provenance of an Artwork;
- (b) the Artist the artwork is attributed to;
- (c) any sponsorship, approval or affiliation of an Artist (including an Artist's affiliation with a Member or an art centre);
- (d) the place of origin of an Artwork;
- (e) that an Artwork has been produced by an Aboriginal Artist or Artists; and
- (f) the Artwork's exhibition history, reference notes, authenticity statements or price.

2.3 Respect for Aboriginal Cultural Practices and Artist's Rights

Members must respect the rights of Artists and use their best endeavours to identify and adhere to applicable Indigenous cultural practices, including by:

- (a) respecting the Artist's Moral Rights and copyright in the Artwork, and obtaining the consent of the Artist before reproducing the Artwork (or permitting a third party to reproduce the Artwork) in any form;
- (b) not using the name and/or image of Artists who are deceased unless the Member has used their best endeavours to obtain permission from:
 - (i) that Artist, prior to their death, to use their name or image if they become deceased; or
 - (ii) the Artist's family, community or estate for the use of the deceased Artist's name and/or image; and
- (c) not marketing, promoting, displaying or selling Artwork or material (such as tjuringas or human remains) which a reasonable person would know contains content that the relevant Aboriginal community and/or traditional owners consider to be secret/sacred and/or restricted.

2.4 Care of Artwork

Members must take reasonable precautions and exercise all reasonable care in the handling and storage of any Artwork which is the property of an Artist to ensure that the Artwork is not damaged, destroyed or stolen while the Artwork is in the Member's possession or control.

3. Dealings with Artists

Members must use their best endeavours to ensure that every dealing with an Artist in relation to Artwork involves the informed consent of the Artist. The following clauses will assist Members to ensure they have the informed consent of Artists.

3.1 Provide a Clear Explanation of the Agreement

Before making an Agreement with an Artist in relation to Artwork, a Member must clearly explain to the Artist the key terms of the proposed Agreement, so that the Artist understands the Agreement (for example, using a translator if required). The explanation should be given by the Member to the Artist either directly or through an Artist's Representative in the manner requested by the Artist or Artist's Representative. If there is any doubt about whether the Artist fully understands the explanation, the Member must also give the Artist the opportunity to ask a third party for assistance to help the Artist to understand, and negotiate changes to, the proposed Agreement.

3.2 Agreements with Artists

An Agreement between a Member and an Artist in relation to Artwork (whether written or verbal) must cover the following key terms:

- (a) a description of the relevant Artwork(s), including the quantity and nature of the Artwork(s);
- (b) any limitation on the Artist's freedom to deal with other dealers or representatives;
- (c) whether the Member is acting as an Agent or in some other capacity;
- (d) the cooling-off rights (which must be in accordance with clause 3.3) and how the Agreement can otherwise be changed or terminated;
- (e) costs and payment terms for the Artwork (which must be in accordance with clause 3.4);
- (f) details about any exhibition in which the Artwork is to appear, and any associated promotional activities; and
- (g) any other information determined by the Board and notified to signatories to the Code from time to time.

3.3 Artist's Cooling-off Rights

- (a) An Artist or Artist's Representative may terminate an Agreement within:
 - (i) 7 days after entering into the Agreement; or

- (ii) such longer period as is agreed between the parties.
- (b) A Member must not require the Artist to pay any fees, charges, penalties or compensation as a result of the Artist exercising cooling-off rights under this clause 3.3. However, where Artwork has been produced between the time of the Agreement and the time the Artist exercises their rights under clause 3.3, the Member is entitled to proceed to market the artwork and to recover their costs from the proceeds of the sale of the Artwork.

3.4 Payment for Artists

An Agreement must also cover the following in relation to each Artwork:

- (a) the amount of the payment and the means by which the payment will be made;
- (b) the date by which payment to the Artist will be made which (unless otherwise agreed) must be:
 - (i) where the Member is acting as an Agent, no later than 30 days after the end of the month in which the Member received all funds due from the sale of the Artwork; and
 - (ii) where the Member buys Artwork directly from the Artist, no later than 30 days after the Member takes possession of the Artwork;
- (c) if the Member is acting as an Agent, the amount of the Member's Commission;
- (d) any factors known to the Member that could affect the payment terms; and
- (e) the cost of any goods and services (e.g. canvas, paint, paintbrushes, framing, etc) to be deducted from the payment to the Artist (if any).

3.5 Exclusive Contracts

The Board recommends strongly against Trade, Associate and Corporate Members entering into exclusive contracts with Artists.

4. Record Keeping

4.1 Record Keeping by Members

- (a) a Member must keep records of all dealings with Artists, providing clear evidence of the key terms, and performance of those key terms, of any Agreement between the Member and Artist (the Records).

- (b) If the Member is an Agent, the Member's Records should also include:
 - (i) details of Artwork held by the Member for sale;
 - (ii) the dates of sale of Artwork by the Member; and
 - (iii) the type and quantity of Artwork sold by the Member and:
 - (A) the price received by the Member for the Artwork sold; and
 - (B) details of the payment to the Artist (including the amount, date and method of payment) and details of each amount deducted by the Member from the sale price of the Artwork (for example, the Member's Commission on the sale).
- (c) If the Member purchases Artwork and subsequently on-sells the Artwork, the Member's Records should also record the price the Member was paid for the sale of that Artwork.

4.2 Request for Member's Records

- (a) A Member must provide a copy of the Member's Records that relate to an Artist or Artwork to the Artist within 14 days of a request by the Artist (either directly or through an Artist's Representative), provided that the Member is not obliged to make the same Records available to an Artist more than once every 30 days.
- (b) The Member must provide a copy of the Member's Records to the AAAA, in response to a request in writing by the AAAA, within 14 days.

5. Certificates of Authenticity

5.1 Requirement for Certificates of Authenticity

- (a) Subject to clause 5.2, a Trade or Associate Member who receives an Artwork directly from an Artist must create a Certificate of Authenticity for that Artwork.
- (b) A Certificate of Authenticity must:
 - (i) state that it is an 'Aboriginal Art Code Certificate';
 - (ii) name the Artist or Artists who created the Artwork;
 - (iii) to the extent known, identify where and when the Artwork was created;

- (iv) provide a description of the size of the Artwork, the media used to create the Artwork and of the title (if any) attributed by the Artist to the Artwork;
 - (v) identify the Trade or Associate Member and state that they are 'Signatory to the Aboriginal Art Code'; and
 - (vi) contain a signed declaration from the Trade or Associate Member confirming the accuracy of the details set out in the Certificate.
- (c) For the avoidance of doubt, a Certificate of Authenticity may be created only by a Trade or Associate Member and it should accompany the relevant Artwork when sold.

5.2 Exemption from Requirement for Certificate of Authenticity

A Certificate of Authenticity is not required to accompany an Artwork when sold if:

- (a) the Artwork is sold for less than \$1,000 or any other amount specified by the Board from time to time; or
- (b) the Trade or Associate Member who dealt with the Artist (either directly, or indirectly) can demonstrate that the Artist did not want a Certificate of Authenticity to be created for that Artwork.

5.3 Due Diligence Where No Certificate of Authenticity

Before a Trade or Associate Member acquires Artwork from a person other than the Artist who created the Artwork and for which there is no Certificate of Authenticity, the Member must carry out reasonable due diligence to ensure that the relevant provenance, credibility and authenticity details are confirmed. If those details cannot be confirmed, the Member must not deal with that Artwork.

6. Definitions and Interpretation

6.1 Definitions

In this Code:

‘Aboriginal’ means someone of Aboriginal or Torres Strait Islander descent.

‘Agent’ means a person or organisation who sells Artwork for or on behalf of an Artist in return for a Commission.

‘Agreement’ means a written or verbal agreement between a Member and an Artist for the supply or acquisition of Artwork.

‘Artist’ means an artist, whether living or deceased, of Aboriginal descent who identifies, or who, prior to their death, identified, as Aboriginal, and is, or, prior to their death was, recognised as such by members of the community with which the artist identifies or identified.

‘Artist Representative’ means a person who is authorised by the Artist to speak or act for the Artist, but does not include an Agent.

‘Artwork’ means a work of visual art or craft produced by an Artist, whether or not incorporated into another work of visual art or craft produced by that Artist or another person, including but not limited to painting, drawing, artists' books, woodwork, ceramics, glass, jewellery, sculpture, fibre work, printmaking, photography, installation, video and multimedia.

‘Association’ means the Aboriginal Art Association of Australia Ltd.

‘Board’ means the officers of the Association comprising the Board elected in accordance with the Constitution, from time to time.

‘Certificate of Authenticity’ has the meaning given in clause 5.

‘Code’ means this Aboriginal Art Association of Australia Limited Aboriginal Art Code.

‘Commission’ means the percentage of the price of an Artwork that the Agent charges directly or indirectly for services provided to the Artist in relation to the sale of an Artwork created by that Artist.

‘Constitution’ means the Constitution of the Association.

‘Member’ means someone who is a member of the Association.

Moral Right(s) has the meaning provided in section 189 of the Copyright Act 1968 (Cth) and includes the right to have an Artwork attributed to its Artist, the right of integrity of authorship (which protects against derogatory treatment of an Artwork) and the right not to have an Artwork falsely attributed to another artist.

‘Trade or Associate Member’ means a Trade Member or Associate Member as described in the Constitution.

Approved at Annual General Meeting, Alice Springs NT on 9 September 2016