

## Attachment C: Explanatory Notes - Information regarding amendments to the Constitution and Code

### Overview

The primary objective of the proposed amendments to the Existing Code is to enhance transparency for both signatories to the Indigenous Art Code (currently referred to as Dealer Members) and the Artists they engage with. Over the past two years, IartC has been diligently working on these changes to ensure that the Indigenous Art Code (the **Code**) accurately reflects the current practices and values of our Members and appropriate standards for ethical behaviour and activity in the Aboriginal and Torres Strait Islander visual arts sector.

**The IartC Board considers that the proposed amendments more accurately reflect current practices and values of Members and recommends that you vote in favour of the proposed amendments.**

IartC's ongoing engagement with its Members has highlighted the challenges Artists face in engaging with the market, whether dealing with Dealer Members or non-members. The proposed amendments are designed to support Artists more effectively, addressing the evolving expectations of consumers and the industry as a whole.

While the core principles of the Code remain unchanged, these updates make the document more relevant to today's industry landscape and challenges.

The proposed amendments to the Code are designed to align with the existing Membership application process, ensuring consistency in the expectations set for Members. These updates emphasise the importance of focusing on Artists rather than just the Artwork they produce. IartC's experiences with the updated application and renewal processes over the last year have provided valuable insights into the needs and expectations of our Members and applicants. It has become evident that there is a strong desire for continuous improvement and clarity in how Dealer Members (proposed to be renamed as 'Code Signatories') engage with Artists.

The revised Code continues to be voluntary and is not intended to be punitive; rather, it aims to foster an inclusive environment where Members feel supported and informed. The updated Code serves as an educative tool, offering guidance and clarity on the expected behaviours and practices of Code Signatories. By formalising these expectations, we acknowledge the positive ways Members are already working with Artists while providing room for further improvements.

There will be a 'grace period' before the proposed amendments to the Code take effect, to allow for a smooth transition, ensuring Code Signatories have adequate time to adjust to the new standards and requirements set out in the new Code. As a result of the proposed amendments to the Code, certain amendments are also required to the existing Constitution, to ensure it remains consistent with the Code. The Board has also taken the opportunity to put forward certain other improvements to the Constitution.

An explanation of the intended purpose and effect of the adoption of the principal changes that are proposed to:

- the existing Code is set out in Table A below; and
- the existing Constitution (excluding the Code) is set out in Table B below.

Other changes to the existing Code and Constitution that are of a minor, technical or clarifying nature, or which relate to or are necessary to accommodate the new Code, have not been noted in the tables.

The Company has collaborated closely with Allens (a leading law firm) in drafting the proposed amendments to the Code and Constitution.

Defined terms used in this document have the meaning set out in the existing Constitution, unless the context requires otherwise.

**Table A: Summary of the principle proposed amendments to the Code**

#	Clause of the Code	Proposed Amendment	Explanation
1.	Various	Updating the term 'Dealer Members' to 'Code Signatories'	<p>This revision is proposed for several reasons:</p> <ol style="list-style-type: none"> <li>1 <b>Improving Perceptions:</b> The term 'Dealer' has developed negative connotations that some Members find restrictive and inappropriate.</li> <li>2 <b>Broadening the Scope:</b> The term 'Dealer Member' suggests a limited focus on buying and selling, which does not accurately reflect the diverse interactions between Artists and Members. The new term 'Code Signatories' better captures the wide range of activities and relationships in the Indigenous visual arts sector. It includes not just traditional sales, but also licensing and other forms of engagement, making it a more accurate description.</li> <li>3 <b>Inclusivity and Relevance:</b> The proposed term encompasses all signatories to the Code, including Art Centres and other organisations, providing a more inclusive and relevant label.</li> </ol>

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			<p>4 <b>Emphasising Commitment:</b> 'Code Signatories' highlights the ongoing commitment members make to adhere to the Code's principles and standards. It signifies a continuous engagement with ethical practices, rather than a one-time agreement.</p> <p>5 <b>Clarity:</b> Parties are often confused by what 'Dealer Membership' signified. 'Code Signatory' clearly demonstrates that this category of Member has agreed to adhere to the Code.</p>
2.	1.1	The purpose of the Code is to establish standards for Code Signatories when engaging with Artists to promote, sell, reproduce or license Artwork, or otherwise engage in commercial arrangements involving Artwork.	This amendment clarifies the areas in which standards are relevant, particularly highlighting the importance of licensing as a major area of engagement between Code Signatories and Artists.
3.	1.2	The Code supersedes the previous form of the code.	The amendments to clause 1.2 are mechanical in nature and propose that the existing Code be replaced with the new Code.
4.	2.1	Code Signatories must act transparently.	The term 'in good conscience' is somewhat vague and open to interpretation. Replacing it with 'transparency' is intended to provide a clearer and more specific guideline for behaviour.
5.		<p>Paragraph (g)</p> <p>An example of unacceptable conduct includes not informing Artists of higher resale value of the Artwork.</p>	The inclusion of specific types of unacceptable behaviour, such as penalties, threats, harassment and coercive control, is based on the types of complaints the IartC receive. Clearly defining these behaviours in the Code is essential to explicitly communicate that such actions are not permissible under any circumstances.
6.		<p>Paragraph (h)</p> <p>An example of unacceptable conduct includes dealing with people or organisations who do not meet the Code's standards.</p>	This provision has been included to ensure that when Code Signatories work with suppliers who are not signatories to the Code, they confirm that their suppliers meet the standards set out in the Code. Issues related to licensed products supplied to Code Signatories are consistently raised with the IartC.

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7.	2.2	Code Signatories must not engage in misleading or deceptive conduct. New examples of unacceptable conduct have been inserted, including concealing sponsorships, falsely representing that an Artwork was produced by an Indigenous Artist and not providing accurate information to Artists about the Artwork's sale price.	The inclusion of these examples is essential because they expressly call out misleading and deceptive acts in respect of which IartC consistently receives complaints and requests for support.
8.	2.3	Code Signatories must take reasonable care when handling and storing Artwork.	This has not changed from the original Code but is showing as a change as it has moved in position, from previous clause 2.4 to a new clause 2.2.
9.	3(a)	Code Signatories must respect Artist's rights, including Indigenous Cultural and Intellectual Property rights and correctly attribute the Artist's name and Artwork's title.	This inclusion expressly calls out to Code Signatories the importance of attribution. The IartC consistently encounters instances where proper attribution is not provided.
10.	3(b)(ii)	Code Signatories must not deal with Artwork with communal rights attached to it unless the owner provides written consent	These points have been added to ensure that the Code explicitly prohibits the sale and promotion of fake Aboriginal and Torres Strait Islander art, a consistent issue within the market.
11.	3(b)(i)(A)	Code Signatories must not deal with Artwork which imitates Indigenous Artworks, such as being generated by AI or produced within or outside of Australia.	The inclusion of this point is an important addition to the Code as it addresses a growing concern in the sector about the use of artificial intelligence in creating and/or manipulating art.
12.	3(b)(iii)	Signatories must adhere to the Resale Royalty Act requirements.	The inclusion of this point is to ensure that Code Signatories are aware of and adhere to the need to pay Artists in accordance with the Resale Royalty Act. This is important as Indigenous Art Code is aware of art market professionals who are not adhering to their obligations, depriving Artists of money they are owed.
13.	4	Code Signatories must suggest to the Artist that they seek legal or other independent advice.	This amendment clarifies the importance of Code Signatories supporting Artists to obtain legal and other independent advice, increasing the specificity of the requirement.

#	Clause of the Code	Proposed Amendment	Explanation
14.	4.2	<p>Code Signatories should use their best endeavours to enter into written Agreements with Artists. In addition, following the Transition Period, Agreements with Artists must include:</p> <ul style="list-style-type: none"> <li>• the Code Signatory's and Artist's details;</li> <li>• further details around the Artwork's description;</li> <li>• the term of the agreement;</li> <li>• the nature of the appointment;</li> <li>• term and scope of licences for licensing arrangements;</li> <li>• if relating to an Artist's copyright, an explanation as to the effect of the sale of the Artist's copyright;</li> <li>• if relating to licensing of an Artist's copyright, further details of the term, territory, sublicensing rights and the permitted use;</li> <li>• the Code Signatory obligations in respect of the Artist's Moral Rights and copyright;</li> <li>• the Code Signatory's obligations generally;</li> <li>• the Artist's obligations;</li> <li>• how disputes will be handled;</li> <li>• an Artist's acknowledgement that the terms have been explained;</li> <li>• an Indigenous Cultural and Intellectual Property Notice;</li> <li>• a GST clause; and</li> <li>• a statement that the parties will amend the agreement to incorporate additional necessary information as</li> </ul>	<p>The Code currently requires that Code Signatories have written or verbal agreements in place with the Artists they work with to ensure that Artists receive clear and transparent information regarding the terms of the deal.</p> <p>The IartC considers written agreements to be best practice. As such, it is proposed that Code Signatory must use their <b>best endeavours</b> to ensure that any Agreement with an Artist is in writing. This is a lower threshold than a strict requirement that all Agreements must be in writing.</p> <p>However, note that there is a strict requirement that Agreements with Artists concerning licences <b>must be</b> in writing (see item 15 below).</p> <p>During the application and renewal process, IartC has observed an increasing number of Code Signatories implementing written agreements with the Artists they work with. For those who currently do not have written agreements in place, IartC acknowledges that implementing such agreements can be challenging and burdensome. Concerns arise regarding the resources needed to develop these agreements, the literacy levels of some Artists and the overall comprehension of the agreements. To address these challenges, IartC consistently recommends that Artists seek legal advice from the Arts Law Centre of Australia, which provides support at low or no cost. Additionally, template agreements are available from the Arts Law Centre to assist Code Signatories in creating clear and comprehensive written agreements. These templates are expected to be updated to reflect the proposed amendments in this clause 4.2 of the Code.</p>

#	Clause of the Code	Proposed Amendment	Explanation
		determined by the directors of the IartC from time to time.	The additional terms that are now expressly called out in clause 4.2 reflect issues or complaints (eg concerning gaps in Agreements) that Artists have raised with IartC.
15.	4.3	All Agreements relating to the licensing of Artwork must be in writing.	<p>At present, the Code permits such Agreements to be written or verbal.</p> <p>IartC strongly believes that there should be no exception to the requirement for a written agreement in relation to licensing agreements. Licensing an artwork for reproduction involves numerous considerations, including the quantity and duration. The agreement defines how the Artist's intellectual property will be used. It is crucial that these terms are clearly communicated to the Artist to prevent misunderstandings or misuse.</p> <p>The issue of copyright misuse is frequently reported to the IartC, highlighting the need for stronger protections. Updating the Code will</p> <p>ensure these agreements are formalised in writing, providing a clear and enforceable framework that safeguards Artists' rights and interests.</p> <p>See also comments at item 14 above.</p>
16.	4.4	The new requirements in clause 4.2 and clause 4.3 do not apply to Agreements between Signatories and Artists during the Transition Period and will apply to any new Agreements or Agreements amended after the end of the Transition Period.	<p>This point has been added to acknowledge that it will take time for Code Signatories to establish written agreements, and it provides a transition period during which the new obligations will not apply, allowing for a smoother implementation and adjustment to the updated requirements.</p> <p>The Transition Period will commence on the date of adoption of the new Code and end on 1 December 2025.</p>

#	Clause of the Code	Proposed Amendment	Explanation
17.	4.6(f)	<p>The proposed amendments include a new concept of 'Book Up/Credit arrangements. This is defined to mean an arrangement where a Code Signatory provides an Artist with credit (on a one-off or continuing basis), in exchange for a future payment that the Code Signatory will receive in connection with that Artist's Artwork(s).</p> <p>Where an Agreement permits Book Up/Credit arrangements, the Code Signatory must explain the terms to the Artist, consider the Artist's financial circumstances, keep records of all transactions, ensure the transactions do not exceed the Artwork's likely value and provide a copy of transactions to the Artists within 7 days of a request.</p>	<p>IartC is consistently contacted regarding concerns and complaints to do with Book Up/Credit arrangements.</p> <p>IartC of the strong opinion that lines of credit being offered need to be done in a well documented and transparent way, ensuring Artists are fully aware of the terms of the deal and that the arrangements do not cause material financial hardship to the Artist.</p>
18.	5.1(a)	<p>Code Signatories must keep records for seven years after the relevant transactions.</p> <p>In addition, the proposed amendments now provide that where the Code Signatory has engaged with an Artist through an Artist's Representative, that the Code Signatory keep records to evidence the Artist Representative's authority to speak or act for that Artist.</p>	<p>This point has been amended to provide clearer direction.</p>
19.	5.1(b)-(c)	<p>Code Signatories' records must include certain information, not only in relation to any sale but also to any consignment or licence.</p>	<p>Consignment and licensing have been included to ensure records are kept of all relevant activities.</p>
20.	5.2	<p>Code Signatories must provide a copy of their records to IartC within 7 days after any written request.</p>	<p>This point has been amended to provide clearer direction.</p>
21.	6.1(c)	<p>An individual who is not a Code Signatory cannot create a Code Certificate.</p>	<p>This point has been amended to provide clearer direction.</p>

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22.	6.2(b)	The Code Signatory must demonstrate that the Artist agreed in writing that they did not want a Code Certificate to be created for that Artwork.	This point has been amended to provide clearer direction.
23.	7	Code Signatories are entitled to display the Company logo to signify they are acting in accordance with the Code, provided the logo is not permanent and ceases to be displayed after they ceases to be a Code Signatory.	This has been added to take into account the reality that people or entities sometimes cease to be Code Signatories and to protect the Code's name being associated with non-Members.
24.	8	Where the Company receives a complaint made against a Code Signatory, the complaint may be dealt with in accordance with Rule 5.9 the Constitution.	This point has been amended to provide clearer direction for Members as to how complaints against Code Signatories may be resolved.

**Table B: Summary of the principle proposed amendments to the Constitution**

#	Rule	Proposed Amendment	Explanation
1.	Various	Updating the Constitution for consistency with proposed amendments to the existing Code in Schedule 1 of the Constitution. For example, changing references to 'Dealer Member' to 'Code Signatory' and updates to the objects in clause 3.2 to align with the updated objectives in the Code.	See Table A for an explanation of the intended purpose and effect of the adoption of the principle changes that are proposed to the Schedule 1 of the Constitution (the Code).
2.	Various	Removal of concept of 'Inaugural Directors'	This amendment recognises that the Company has now been incorporated for more than 10 years. The Inaugural Directors are no longer acting as Directors of the Company and the remaining references are outdated.



#	Rule	Proposed Amendment	Explanation
3.	Various	Updating the Constitution to allow Members to attend a general meeting using virtual meeting technology approved by the Directors.	This amendment will facilitate Members attendance, participation and voting at a meeting without the need to physically attend or appoint a proxy. The amendments will also give the Board flexibility in holding meetings of Members in person, as a hybrid or as a purely 'virtual' meetings using online meeting technology, where considered appropriate. The amendments reflect the Government's changes to the Corporations Act following the COVID-19 pandemic, to allow the use of virtual or hybrid meetings.
4.	3.2(k)	Removing from the Objects of the Company the objective of 'seeking government and stakeholder support for a Prescribed Mandatory Code and, if support is obtained, co-ordinate and liaise with government and governmental and regulatory bodies in relation to the establishment, implementation and operation of a Prescribed Mandatory Code'.	This amendment recognises that the Company is no longer seeking support for a Prescribed Mandatory Code regulating the conduct of participants in the Indigenous visual arts industry declared by regulations under section 51AE of the Competition and Consumer Act 2010 (Cth). Instead, the Company aims to continue to promote Indigenous visual arts through (among other things) the existing voluntary Code (including any amendments approved at the AGM and Dealer Members Meeting).
5.	10.2	Removing outdated references to 'Australian Commercial Galleries Association' and 'Australian Indigenous Art Trade Association'.	These amendments remove former names of these two associations and replace those names with the current names of these two associations.  'Australian Commercial Galleries Association' is now known as 'Art Galleries Association of Australia'.  'Australian Indigenous Art Trade Association' is now known as 'Aboriginal Art Association of Australia'.