

Indigenous Art Code

*A Code of Conduct for fair, transparent and ethical trade with
Aboriginal and Torres Strait Islander visual artists*



Indigenous Art Code

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1. Purpose of the Code and its Application

1.1 Purpose of the Code

In 2007, a Senate Inquiry into Australia's Aboriginal and Torres Strait Islander visual arts industry recommended the establishment of an Indigenous Art Code to guide ethical behaviour and activity in the sector. The purpose of the Code is to establish standards for Code Signatories when engaging with Artists for the promotion, sale, reproduction or licensing of Artwork or when otherwise engaging in commercial arrangements involving Artwork, to facilitate:

- (a) fair and ethical trade with Artists and in Artwork;
- (b) transparency in the process of commercial dealings between Code Signatories and Artists (including regarding the promotion, licensing and sale of Artwork); and
- (c) that any breach of the Code by a Code Signatory is dealt with efficiently and fairly.

1.2 Application of the Code

The Code is a voluntary code that contains standards of behaviour and requirements applicable only to Code Signatories. Subject to clause 4.4, this Code supersedes the form of the code in force immediately before the adoption of this Code, and applies on and from the date of adoption of this Code.

1.3 Code Signatories

Persons or organisations who wish to become a Code Signatory must apply for membership of the Company in the class of members set out in Rule 5.5(a) of the Constitution. An application form is available on the Company's website: www.indigenousartcode.org. If the application is approved by the Directors, the person or organisation becomes both a member of the Company and a Code Signatory when registered in the register of members of the Company.

A person or organisation will cease to be a Code Signatory immediately upon that person or organisation ceasing to be a member of the Company in the class of members set out in Rule 5.5(a) of the Constitution, in accordance with the Constitution.

1.4 Conflict with Existing Law or Constitution

The Code applies in addition to the existing legislation and regulations that apply to participants in the Aboriginal and Torres Strait Islander visual arts sector. If there is any conflict or inconsistency between a provision of this Code and an applicable existing law or regulation, or provision of the Constitution, then that law, regulation or

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provision will prevail to the extent of the inconsistency and the provisions of this Code will be construed accordingly.

2. General Standards of Conduct for Code Signatory

2.1 Code Signatories Must Act Honestly

Code Signatories must at all times act fairly, honestly, professionally and transparently when engaging or communicating with an Artist (whether engaging or communicating directly with the Artist or through an Artist's Representative) and when otherwise dealing with Artwork. Examples of conduct that would not meet the required standard include, but are not limited to, a Code Signatory:

- (a) engaging in unfair or unreasonable conduct, including any penalty or unfavourable treatment where the Artist exercises their right to seek legal or other independent advice;
- (b) applying undue pressure or influence or unfair tactics, including threats, harassment or coercive control;
- (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;
- (f) paying or agreeing to pay an Artist an amount or other consideration for the Artist's Artwork that is, in all the circumstances, against good conscience;
- (g) if the Code Signatory intends to resell the Artwork and the potential resale value is significantly higher than the amount that the Code Signatory is paying or has agreed to pay to the Artist, not informing the Artist of the potential resale value; and
- (h) dealing, contracting or otherwise engaging with a person or organisation in respect of Artwork where the Code Signatory has not taken reasonable steps to identify or assess whether the person or organisation meets the standards of the Code.

2.2 No Misleading or Deceptive Conduct

Code Signatories must not make false or misleading representations or engage in conduct which constitutes misleading or deceptive conduct, or conduct that is likely to mislead or deceive, when engaging or communicating with an Artist or dealing with a person or organisation in connection with Artwork (including licensing Artwork). Examples of misleading or deceptive conduct include, but are not limited to, a Code Signatory:

- (a) engaging in misleading or deceptive conduct about any of the following matters:
 - (i) the authenticity or provenance of an Artwork;
 - (ii) any sponsorship, approval or affiliation of an Artist (including representatives regarding an Artist's affiliation with a Code Signatory, or concealing or misrepresenting an Artist's affiliation with a Code

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- Signatory), including concealing any sponsorship, approval or affiliation of an Artist;
- (iii) the place of origin of an Artwork;
- (iv) the Artwork's exhibition history, reference notes, authenticity statements or prices previously paid regarding that Artwork;
- (v) any amounts or fees paid to the Artist in respect of the Artwork; and
- (b) representing that an Artwork has been produced by or licensed from an Aboriginal and Torres Strait Islander Artist when it has not; and
- (c) in respect of Artwork sold on consignment, not providing accurate information to the Artist showing the sale price or any deductions from the sale price, including commissions that the Code Signatory or others will receive.

2.3 Care of Artwork

Code Signatories 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 Code Signatory's possession or control.

3. Respect for Aboriginal and Torres Strait Islander Cultural Practices and Artist's Rights

- (a) Code Signatories must respect the rights of Artists (including rights in connection with Indigenous Cultural and Intellectual Property) and use their best endeavours to identify and adhere to applicable Aboriginal and Torres Strait Islander cultural practices, including by respecting the Artist's Moral Rights and copyright in the Artwork, correctly attributing the Artist name and Artwork title whenever an image of an Artwork is reproduced or used for promotion and obtaining the consent of the Artist before reproducing the Artwork (or permitting a third party to reproduce the Artwork) in any form.
- (b) Code Signatories must:
 - (i) not market, promote, display, license, sell, distribute, purchase or otherwise deal with Artwork or material (such as Tjuringas or human remains):
 - (A) which a reasonable person would know contains content that the relevant Indigenous community and/or traditional owners consider to be secret/sacred and/or restricted; or
 - (B) where a reasonable person would know communal rights attach to that Artwork or material and written consent to market, promote, display, license, sell, purchase or distribute that Artwork or material has not been provided by the relevant owners; and
 - (ii) not consign, market, promote, display, license, sell, distribute, purchase or otherwise deal with artwork or material that is intended to

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look like Artwork by an Aboriginal and/or Torres Strait Islander Artist but is not actually created or produced by an Aboriginal and/or Torres Strait Islander Artist, including, but not limited to, artwork or material:

- (A) not created or produced by an Aboriginal and/or Torres Strait Islander Artist and generated by artificial intelligence software; or
- (B) not created or produced by an Aboriginal and/or Torres Strait Islander Artist and created, produced or manufactured outside of or within Australia; and

(iii) adhere to the requirements under the Resale Royalty Act.

4. Commercial Dealings with Artists

Code Signatories must ensure that every commercial dealing with an Artist in relation to Artwork involves the informed consent of the Artist. The following clauses will assist Code Signatories to ensure they have the informed consent of Artists.

4.1 Provide a Clear Explanation of the Agreement

Before making an Agreement with an Artist in relation to Artwork, a Code Signatory 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 Code Signatory 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 Code Signatory must suggest to the Artist that they seek legal advice or other independent assistance to help the Artist to understand, and negotiate changes to, the proposed Agreement.

4.2 Agreements with Artists

A Code Signatory must:

- (a) ensure that all Agreements relating to the licensing of Artwork (whether an exclusive or non-exclusive licence) are in writing; and
- (b) use its best endeavours to ensure that any other Agreement with an Artist in relation to Artwork is in written form.

4.3 Key Terms of Agreements with Artists

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

- (a) the details of the Code Signatory, including the name and address of the Code Signatory;
- (b) the details of the Artist, including the name and address of the Artist, and the details of any other or Artists who also created the Artwork;
- (c) a description of the relevant Artwork(s), including the quantity, nature, size, title (if any) given by the Artist and medium of the Artwork(s);

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- (d) the term of the Agreement, including whether it is a fixed term or an ongoing engagement, and if an ongoing engagement, the circumstances in which it can be terminated, or the manner in which the payment terms to the Artist might change;
- (e) the nature of the appointment of the Code Signatory by the Artist, including whether it is an exclusive or non-exclusive appointment, and if exclusive, the term of that exclusivity, and whether there is any limitation on the Artist's freedom to deal with other Code Signatories, individuals or organisations;
- (f) whether the Code Signatory is acting as an Agent or in some other capacity;
- (g) the cooling-off rights (which must be in accordance with clause 4.5) and how the agreement can otherwise be changed or terminated;
- (h) costs and payment terms for the Artwork (which must be in accordance with the applicable subclauses set out in clause 4.6);
- (i) details about any exhibition in which the Artwork is to appear, and any associated promotional activities;
- (j) for licensing arrangements, the term and scope of the licence and whether it is an exclusive or non-exclusive licence, for example, whether the Artist is restricted from displaying, licensing or selling their Artwork to other persons or organisations;
- (k) if the agreement includes a term for the sale of an Artist's copyright in an Artwork, then the Agreement must clearly explain the effect of the sale of the Artist's copyright, including that the Artist will no longer have any rights to reproduce that Artwork;
- (l) if the Agreement includes a license of an Artist's copyright in an Artwork, then the Agreement must:
 - (i) detail the territory over which the licence extends;
 - (ii) detail the term of the licence;
 - (iii) detail whether the Code Signatory has the right to sublicense the Artwork; and
 - (iv) clearly define the permitted use of the licence;
- (m) the Code Signatory's obligations in relation to the Artist's Moral Rights and copyright in the Artwork;
- (n) the obligations of the Code Signatory, which may include representing and promoting the Artist(s), assuming responsibility for damage to the Artwork(s) while in the Code Signatory's control, and keeping adequate records of sales of the Artworks (which must be in accordance with clause 5);
- (o) any obligations of the Artist(s);
- (p) how any disputes between the Artist and Code Signatory will be handled;
- (q) an acknowledgement from the Artist that the terms of the Agreement have been explained to the Artist, and if requested by the Artist or if the Code Signatory is aware that the Artist is not fluent in English, a translator has been provided;

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- (r) a GST clause; and
- (s) a statement that the parties will amend the Agreement to incorporate any additional key terms determined by the Directors and notified to Code Signatories from time to time.

4.4 Transition Period

- (a) During the Transition Period, the obligations in clauses 4.3(a), 4.3(b), 4.3(d), 4.3(e) and 4.3(j) through to 4.3(r) do not apply to any agreements between Code Signatories and Artists.
- (b) Immediately after the end of the Transition Period, the obligations in clauses in clauses 4.3(a), 4.3(b), 4.3(d), 4.3(e) and 4.3(j) through to 4.3(r) will apply to all:
 - (i) new Agreements entered into between Code Signatories and Artists after the end of the Transition Period; and
 - (ii) any Agreements entered into between Code Signatories and Artists before the end of the Transition Period that are amended after the end of the Transition Period.
- (c) For the avoidance of doubt, the obligations in clauses 4.3(a), 4.3(b), 4.3(d), 4.3(e) and 4.3(j) through to 4.3(r) do not apply to Agreements entered into before the end of the Transition Period, unless such an Agreement is amended after the end of the Transition Period.

4.5 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 Code Signatory must not require the Artist to pay any fees, charges, penalties, compensation or other costs as a result of the Artist exercising cooling-off rights under this clause 4.5.

4.6 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 Code Signatory is acting as an Agent, no later than 30 days after receiving funds for the Artwork; and
 - (ii) where the Code Signatory buys Artwork directly from the Artist, no later than 30 days after the Code Signatory takes possession of the Artwork;

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- (c) if the Code Signatory is acting as an Agent, the amount of the Code Signatory's payment or commission;
- (d) any factors known to the Code Signatory that could materially impact the payment terms;
- (e) the cost of any goods and services (e.g. canvas, paint, paintbrushes, framing, accommodation, food, fuel etc) to be deducted from the payment to the Artist (if any); and
- (f) though the Code does not encourage Code Signatories to offer Book Up/Credit to Artists, if the Agreement permits the Code Signatory to offer Book Up/Credit to the Artist, the Code Signatory must:
 - (i) clearly explain to the Artist the terms of the Book Up/Credit arrangement;
 - (ii) taking into account the Artist's financial circumstances, ensure the Book Up/Credit arrangement does not cause material financial hardship to the Artist or create any form of indebted labour or a situation where the Artist is unlikely to be able to repay the debt to the Code Signatory;
 - (iii) keep records of all transactions that increase or decrease the value of the Book Up/Credit owed by the Artist to the Code Signatory (the **Book Up/Credit Transactions**);
 - (iv) ensure the value of the Book Up/Credit Transactions never exceeds the value that the Code Signatory is likely to receive in connection with the Artist's Artwork(s); and
 - (v) provide a copy of the Book Up/Credit Transactions to the Artist or the Company within 7 days after a request by the Artist (either directly or through an Artist's Representative) or the Company, provided that the Code Signatory is not obliged to make the same Book Up/Credit Transactions available to an Artist more than once every 30 days.

5. Record Keeping

5.1 Record Keeping by Code Signatories

- (a) A Code Signatory must keep, for a period of seven years after the relevant transaction, records of all material Artwork dealings, including retaining clear evidence of the key terms of any Agreement, and details regarding performance of those key terms (the **Records**).
- (b) The Code Signatory's Records must, if applicable, include:
 - (i) details of Artwork held by the Code Signatory for consignment, sale or licensed by the Code Signatory;
 - (ii) the dates of consignment, sale or the licence of Artwork by the Code Signatory; and
 - (iii) the type and quantity of Artwork consigned, sold or licensed by the Code Signatory and:

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- (A) the price received by the Code Signatory for the Artwork consigned, sold or licensed, 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 Code Signatory from the consignment, sale or licence price of the Artwork (for example, the Code Signatory's commission on the consignment, sale or licence); and
- (iv) where the Code Signatory has engaged with the Artist through an Artist's Representative, evidence to show that the Artist Representative is authorised to speak or act for the Artist.
- (c) If the Code Signatory purchases, consigns, receives a consignment or licenses Artwork and subsequently on-sells, on-consigns or on-licenses the Artwork, the Code Signatory's Records should also record the price the Code Signatory was paid for the consignment, sale or license of that Artwork.

5.2 Request for Code Signatory's Records

- (a) A Code Signatory must provide a copy of the Code Signatory's Records that relate to an Artist or Artwork to the Artist within 7 days of a request by the Artist (either directly or through an Artist's Representative), provided that the Code Signatory is not obliged to make the same Records available to an Artist more than once every 30 days.
- (b) The Code Signatory must provide a copy of the Code Signatory's Records to the Company within 7 days after any request in writing by the Company.

6. Code Certificates

6.1 Requirement for Code Certificates

- (a) Subject to clause 6.2, a Code Signatory who receives Artwork directly from an Artist must create a Code Certificate for that Artwork.
- (b) A Code Certificate must:
 - (i) state that it is an 'Indigenous 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 and medium of the Artwork and of the title (if any) attributed by the Artist to the Artwork;
 - (v) contain a photographic image of the Artwork, in which the Artwork is clearly distinguishable;
 - (vi) name the Code Signatory and state that they are 'Signatory to the Indigenous Art Code'; and
 - (vii) contain a signed declaration from the Code Signatory confirming the accuracy of the details set out in the Code Certificate.

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- (c) For the avoidance of doubt:
 - (i) a Code Certificate may only be created by a Code Signatory;
 - (ii) a Code Certificate should accompany the relevant Artwork when sold; and
 - (iii) an individual who is not a Code Signatory cannot create a Code Certificate.

6.2 Exemption from Requirement for Code Certificate

A Code Certificate is not required to accompany Artwork when sold if:

- (a) the Artwork is sold for less than \$250 or any other amount specified by the Directors from time to time; or
- (b) the Code Signatory who dealt with the Artist (either directly, or through an Artist Representative) can demonstrate that the Artist agreed in writing that they did not want a Code Certificate to be created for that Artwork.

6.3 Due Diligence Where No Code Certificate

Before a Code Signatory acquires, licenses or otherwise deals with Artwork from a person that is not the Artist who created the Artwork and for which there is no Code Certificate, the Code Signatory must carry out reasonable due diligence in respect of the Artwork and Artist to ensure that the relevant provenance, credibility and authenticity details are confirmed. If those details cannot be confirmed, the Code Signatory must not deal with that Artwork.

6.4 Notification of Deficient Code Certificate

If a Code Signatory becomes aware of a Code Certificate that does not meet the requirements of clause 6.1, the Code Signatory must immediately notify the Company of that deficient Code Certificate.

7. Code Promotion and Branding

7.1 Use of Company logo

A Code Signatory is entitled to publicly display the current Company logo in connection with the Code Signatory's business to signify that the Code Signatory is acting in accordance with this Code, including:

- (a) at the physical place(s) of business where the Code Signatory deals in Artwork;
- (b) on any business website of the Code Signatory which relates to dealings in Artwork;
- (c) on any promotional material created by or for the Code Signatory in relation to dealings in Artwork; and
- (d) subject to clause 7.3, on packaging or labelling of Artwork,

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provided that the public display of the Company logo is not permanent and can be easily removed or deleted should the person or entity cease to be a Code Signatory.

7.2 Ceasing use of Company logo

Where a person or entity ceases to be a Code Signatory, that person or entity must cease publicly displaying the Company logo as soon as reasonably practicable and, in any event, within two weeks after they cease to be a Code Signatory. For the avoidance of doubt, a Code Signatory who is subject to a sanction imposed under Rule 5.9 of the Constitution is not entitled to publicly display the Company logo, unless the Directors decide otherwise.

7.3 Use of Company logo on packaging and labelling

In the event that the Code Signatory uses the Company logo on packaging or labelling of Artwork, the packaging or labelling must:

- (a) name the Artist or Artists who created the Artwork;
- (b) to the extent known, identify where and when the Artwork was created;
- (c) provide a description of the size and medium of the Artwork and of the title (if any) attributed by the Artist to the Artwork; and
- (d) name the Code Signatory and state that they are 'Signatory to the Indigenous Art Code'.

8. Complaints Handling

- (a) A Code Signatory must use best endeavours to resolve any complaint in relation to dealings with an Artist or their Artwork made against them fairly and promptly.
- (b) Where the Company receives a complaint made against a Code Signatory, the Directors may determine to deal with the complaint in accordance with Rule 5.9 of the Constitution.

9. Definitions and Interpretation

9.1 Definitions

In this Code:

Agent means a person or organisation who sells, licenses or otherwise deals with Artwork for or on behalf of an Artist in return for payment or a commission.

Agreement means an agreement between a Code Signatory and an Artist in respect of Artwork.

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

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Artist Representative means, in respect of an Artist, 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.

Book Up/Credit means 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). The credit may be in the form of money (for example, a payment in advance), goods or services provided to the Artist or to another person on behalf of the Artist (such as a family member of the Artist).

Code Certificate means a certificate in accordance with clause 6.1.

Code Signatory means:

- (a) an Agent; or
- (b) a person or organisation who is not an Agent but who acquires Artwork, or who carries on business involving the acquisition of Artwork, for re-supply by means of sale, licensing or other distribution which may include but is not limited to a wholesaler, retailer, art gallery, auction house or art centre.

who is a current member of the Company registered in the register of members of the Company.

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, distribution, consignment, promotion or licensing of an Artwork created by that Artist.

Company means Indigenous Art Code Limited (ACN 139 788 711).

Constitution means the Constitution of the Company.

Director means a means a person appointed or elected to the office of director of the Company in accordance with the Constitution and, where appropriate, includes an alternate director.

Indigenous Cultural and Intellectual Property means the rights that Aboriginal and Torres Islander peoples have to their cultural heritage, including, but not limited to:

- (a) traditional knowledge, traditional cultural expression, cultural objects, secret and sacred material as well as documentation of Aboriginal and Torres Islander peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports, records taken by others, sound recordings and digital databases; and
- (b) tangible (objects, artwork, physical items), and intangible (knowledge, storytelling and techniques).

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.

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Resale Royalty Act means the *Resale Royalty Right for Visual Artists Act 2009* (Cth).

Transition Period means the period:

- (a) starting on the date of adoption of this Code; and
- (b) ending on 1 December 2025.

9.2 Interpretation

- (a) A reference to a clause is a reference to a clause of this Code unless otherwise specified.
- (b) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (c) A reference to legislation, an agreement or a document (including a reference to this Code or the Constitution) is to the legislation, agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Code or that other agreement or document.