



## Ethical dealing: A checklist for businesses wanting to start trading in original artwork by Aboriginal and Torres Strait Islander artists and/or art centres.

There is increasing interest from businesses wanting to exhibit and sell artwork by Aboriginal and Torres Strait Islander artists. Whilst supporting and engaging with Aboriginal and Torres Strait Islander artists is encouraged, to do so properly, artists need to be in control and able to make informed decisions about what arrangements they enter and who they choose to work with.

**It is essential the relationships businesses establish with Aboriginal and Torres Strait Islander artists are not simply extractive or transactional.**

**The relationships need to be *respectful, meaningful, transparent and fair.***

Here is a checklist to help businesses and individuals wishing to begin trading in original artwork by Aboriginal and Torres Strait Islander artists. It is a list of things to consider even before approaching artists or art centres about exhibiting or trading in their work.

## RESPECTFUL

Respecting Aboriginal and Torres Strait Islander people and their right to maintain and express their culture must be at the centre of all engagement:

- **Educate yourself** about the artist/s, their culture, art centre (if relevant) and artwork before you approach them. Aboriginal and Torres Strait Islander peoples come from distinct cultures and nations. You will not find all of the answers yourself or become an expert, however, it is important that you take the time to do the work and educate yourself.
- **Research the Indigenous art market:** the market for Aboriginal and Torres Strait Islander art operates within the broader Australian and international art market but has some particularities not seen in other art markets. Visit other galleries, look at the work available online, attend art fairs and exhibition openings, research the art from different regions and begin to develop an understanding of the marketplace. Learn about things like Aboriginal and Torres Strait Islander-owned art centres, [certificates of authenticity](#), and the different supply chains operating in the market. Make sure you understand concepts like authenticity, provenance and fairness to the artist. What do each of these concepts mean in relation to the way you will deal in artwork?
- **Read up about Indigenous Intellectual and Cultural Property Rights (ICIP):** these are important rights relating to artists and their works. [Here](#) is an information sheet on ICIP to get you started.



- **Understand your obligations under the Resale Royalty Scheme:** if you are new to the trade of artwork, learn about your legal obligations under the Commonwealth Government's [Resale Royalty Scheme](#).

## MEANINGFUL

- **Consider why you wish to work with an Aboriginal and Torres Strait Islander artist or art centre?** If you express a desire to support Aboriginal and Torres Strait Islander artists and their communities through your engagement, this needs to be genuine and provide meaningful benefit to the artist/s involved. Showing respect and building the relationship (see above) and entering fair arrangements (see below) is how you demonstrate and express this meaningful support. No artist wants their name, culture and artwork exhibited or sold without being treated fairly and shown true respect. **Think carefully and honestly about your motivations. Your actions must match your words.**

## TRANSPARENT

Artists and art centres have the right to make informed choices and fully understand any arrangement before they agree to it. This means dealers must openly and actively provide accurate and transparent information to artists.

The work of many Aboriginal and Torres Strait Islander artists and art centres across the country is highly sought-after and many have well-established relationships in the marketplace. **If you plan to approach an art centre, carefully research their history, the artists they work with and their position in the market.** Many art centres have been operating for decades and have long-standing relationships with dealers. It is up to the art centre if they wish to engage with your business. You will need to demonstrate what value you can bring to the artists and art centre.

- When you approach an artist or art centre, you **need to be able to clearly communicate** what you are proposing and the value you will bring to the artists and art centre. **What arrangement are you offering to them? The arrangement consists of more than just the commission rate (e.g.. 40% of sale price). You might discuss whether you will purchase the artwork upfront or take it on consignment. The arrangement needs to include details of what work you will do and what services will be included.** The best way to provide this detailed information is in the form of a written agreement drafted by a lawyer. The Arts Law Centre of Australia has [a range of templates of best practice written agreements available for purchase](#).



- *Be prepared to provide information around your business structure and supply chains.*
- *Think about the details, do your homework and develop a business plan.*
- *Don't make assumptions or decisions on behalf of artists or art centres. Enable artists or their art centres to maintain agency and make empowered and informed decisions by presenting them with all the information.*

## FAIR

For a range of reasons artists are not always in a position to negotiate the terms of a contract equitably. This is particularly relevant when you are working with independent, previously unrepresented artists. Consider what power imbalances may be at play between you and the artist/s you plan to approach and whether artists are in a position to negotiate on a level playing field.

Artists must be paid fairly for their artwork. Fair means:

- Artists gaining meaningful benefit;
- The agreement is not to the artists' detriment;
- All parties understand the terms of the contract;
- Artists are supported to access independent advice;
- A level playing field with access to transparent information;
- A cooling off period, right to terminate and price information is included the contract.

For artists to know what is fair they need to fully understand what is on offer (the terms of the deal), including who gets what percentage in the deal. Artists have the right to negotiate any arrangement they enter, so be prepared for and open to that negotiation. Artists also need to be encouraged and supported to access independent legal advice on an agreement before they enter them.

Consider your proposal against the above description of fair remuneration. A good question to ask yourself is: ***'Would I or my business be happy to trade places with the artist in the deal I'm proposing?'***

### **Becoming a Dealer Member of the Indigenous Art Code**

Once your business is actively trading (not before) in artwork by Aboriginal and Torres Strait Islander artists you can [apply for Dealer Membership with the Indigenous Art Code](#).

Dealer Members are committed to fair and ethical trade with Aboriginal and Torres Strait Islander artists, and transparency in the promotion and sale of artwork. As a Dealer Member and signatory to



the Indigenous Art Code, members must act fairly, honestly, professionally and in good conscience in all direct and indirect dealings with artists.

Once you have submitted an online application there are likely to be follow up questions and requests for further information tailored to your specific business. Applicants need to demonstrate a commitment to the purpose and standards set out in the Code. What information is required to demonstrate this commitment is tailored to the specific nature of your business. Please read [the Code](#) in detail before applying. Expect the entire assessment process to be rigorous, involved and, at times, extensive. Once you are admitted as a Member, your membership will be reviewed and renewed annually upon payment of a membership fee.