



Ethical licensing: A checklist for brands wishing to collaborate with Aboriginal and Torres Strait Islander artists

There is increasing interest from businesses and brands in collaborating with Aboriginal and Torres Strait Islander artists by licensing their work for use on products. Whilst supporting Aboriginal and Torres Strait Islander artists and businesses is encouraged, to do so properly, artists need to be in control and able to make informed decisions about what arrangements they enter, how their work is used 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 work with and/or license the work of Aboriginal and Torres Strait Islander artists. It is a list of things to consider even before attempting to reach out to artists or start licensing negotiations.

RESPECTFUL

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

- **Do your research** and read up about **Indigenous Intellectual and Cultural Property Rights (ICIP)**, these are important rights relating to artists and their works. Make sure you understand and consider things like moral rights and copyright. [Here](#) is an information sheet on ICIP to get you started. The Australia Council for the Arts has [Protocols for using First Nations Cultural and Intellectual Property in the Arts](#).
- **Educate yourself** about an artist, their culture 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.
- **Allow plenty of time and plan well in advance:** if you plan to work with an artist to develop a product, allow plenty of time for that process to occur. This means allowing time for artists to:
 - get to know you and your business;
 - consider and ask questions about your proposal;



- have contracts drawn up;
- seek independent legal advice;
- review designs of the product and provide approval and sign-off throughout design and production stage.

Pressuring an artist into moving quickly, agreeing to terms or signing contracts in a hurry, is not respectful or fair to the artist.

- **Make room for artist's input:** you need to do the work to research and fully develop your concept and business plan. It is important to bring a considered project proposal to any artist you plan to work with. You also need to make room for artists to have creative input. The output of a project should not be so prescriptive or predetermined that artists can't have a role in shaping the outcomes. You need to be prepared to adapt the project based on artists' creative input.
- **Centre the artists' work and culture:** consider the way your proposed product will showcase the artist and their culture. Aboriginal and Torres Strait Islander art is intrinsically linked to culture, Country and community. How will your project feature and acknowledge these connections in both the way artwork is reproduced on products and also in the marketing and promotion of those products?

MEANINGFUL

- **Consider why you wish to work with an Aboriginal and Torres Strait Islander artist?**
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 leveraged by a brand for social and/or market capital. **Think carefully and honestly about your motivations. Your actions must match your words.**

FAIR

For a range of reasons artists are not always in a position to negotiate the terms of a contract equitably. Consider what power imbalances may be at play between you and the artist/s you plan to approach and whether artists are able to negotiate on a level playing field. **Remember that offering an artist 'exposure' isn't fair payment. Exposure doesn't pay the bills!**



Artists must be fairly remunerated for their contribution to any project. Fair means:

- Artists gaining meaningful benefit;
- The agreement is not to the artists' detriment;
- The licence is mutual – that is, all parties are getting similar benefits;
- 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.

Consider what budget you have available to pay the artist or what royalties or other payment they will receive. Artists have the right to negotiate any arrangement they enter, so be prepared for and open to that negotiation. 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?'***

TRANSPARENT

Artists have the right to make informed choices and fully understand any arrangement before they agree to it. This means providing accurate and transparent information upon request and throughout the different stages of the project.

- If you plan to approach an artist, you ***need to be able to clearly communicate your proposal to them and provide them with information on what type of products are going to be made, what quantity of products will be made and all of the ways their work will be used, including in marketing and on websites.***
- ***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 make decisions on behalf of artists. Enable artist or their art centres to maintain agency and make empowered and informed decisions by presenting them with all the information.***