



Frequently Asked Questions



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INDIGENOUS
ART CODE

Frequently
Asked Questions:
Dealers or
Potential Future
Dealers



Businesses wanting to start dealing in artwork

This information is for guidance only. It is not legal advice.

1

What do I need to consider when first engaging with Aboriginal and Torres Strait Islander artists 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.**

We encourage you to read our checklists to learn more:

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

[Ethical licensing: A checklist for brands wishing to collaborate with Aboriginal and Torres Strait Islander artists](#)

2

How do I make sure I am establishing/operating my business ethically?

We encourage dealers, or those looking to become dealers, in Aboriginal and Torres Strait Islander art to read the Indigenous Art Code (also known as the Code) and identify whether your business practices meet the requirements of the Code.

Another good starting place is to consider the question:

Would I be happy to trade places with the artist in the deal I'm proposing?

It is also important to reflect on whether your arrangements with artists are respectful, meaningful, transparent and fair, rather than just extractive or transactional. Think carefully and honestly about your motivations. Your actions must match your words.



3

What is an art centre?

'Art centre' is the term used in the Indigenous visual art sector to describe a visual art not-for-profit organisation owned and governed by a group of Aboriginal and Torres Strait Islander artists. The artists practicing at an art centre are often linked by community, Country, language, or kinship.

Most art centres around Australia are Indigenous Corporations, incorporated under the [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006](#). Governed by a board, they support artists and arts workers with career and professional development. They also facilitate the production, marketing and sale of artwork and cultural products in the marketplace. Many art centres facilitate a range of programs linked to expression and maintenance of Aboriginal and Torres Strait Islander culture. The majority of art centres nationally are located in remote and regional communities and are supported by peak bodies including [ANKA](#), [AACHWA](#), [Desart](#), [IACA](#), and [Ku Arts](#).

4

How do I find an artist or art centre to work with?

The Indigenous Art Code has over 300 Artist Members (as of September 2021). Similarly, over 60 art centres are Dealer Members of the Indigenous Art Code. Each member has a profile on this website. Member profiles often list contact details or ways to learn more about the artists or art centres.

There are thousands of Aboriginal and Torres Strait Islander artists across the country and, as such, many different ways to engage with them. We encourage you to research Aboriginal and Torres Strait art and culture widely, including from the region in which you live and work. Aboriginal and Torres Strait Islander peoples come from distinct cultures and nations and this is reflected in the breadth and diversity of artistic practice, languages and Country.

You are also encouraged to research the Indigenous art market and learn about artists working across the country by visiting galleries, looking at the work available online, attending art fairs, and researching the art from different regions. Peak bodies ([ANKA](#), [AACHWA](#), [Desart](#), [IACA](#), [Ku Arts](#) and [UMI Arts](#)) are a good source of information on art centres that have membership with them. It is through this research you are likely to find respectful ways to engage with artists and art centres.

5

What is a certificate of authenticity?

'Certificate of authenticity' is a term used widely in the Indigenous visual art sector. It describes the documentation provided, usually by dealers of Aboriginal and Torres Strait Islander art, including art centres, to a consumer which verifies, in writing, that the artwork for sale is the



original work of the artist named. Most often, they are a single page document that is intended to ensure the integrity of statements made about the authenticity of artworks. Photographs of an artist creating or holding an artwork, without other information about the artist and the artwork is not a certificate of authenticity. Clause 5.1 of the the Code stipulates that Dealer Members of the Indigenous Art Code who receive Artwork directly from an Artist over the value of \$250 must create a Code Certificate for that Artwork. A Code Certificate is a certificate of authenticity created by a Dealer Member of the Indigenous Art Code that includes the following:

- I. A statement that it is an 'Indigenous Art Code Certificate';
- II. The name of the Artist or Artists who created the Artwork;
- III. To the extent known, identification of where and when the Artwork was created;
- IV. A description of the size and medium of the Artwork and of the title (if any) attributed by the Artist to the Artwork;
- V. Identification of the Dealer Member stating that they are a 'Signatory to the Indigenous Art Code'; and
- VI. A signed declaration from the Dealer Member confirming the accuracy of the details set out in the Code Certificate.

[For more information refer to the information sheet on certificates of authenticity from the Arts Law Centre of Australia](#)

6

What is the Resale Royalty Scheme? As a dealer what are my obligations under the Resale Royalty Scheme?

The Resale Royalty Scheme is a national scheme established by *Resale Royalty Right For Visual Artists Act of 2009*, which provides visual artists with rights similar to other creators, such as songwriters or authors, who receive royalty payments from their work. The purpose of the scheme is to recognise artists' ongoing rights and provide income from the resales of their work.

The artists' resale royalty scheme started on 9 June 2010.

Under the scheme:

- Commercial resales of artworks for \$1,000 or more must be reported; and
- A 5% royalty is payable on some resales.

The Australian government appointed the [Copyright Agency](#) to manage the scheme.

Key features of the scheme:

- It applies to resales of existing as well as new works;



- It applies to a range of original artworks, included limited edition prints authorised by the artist;
- It does not apply to a private sale from one individual to another;
- All resales for \$1,000 including GST or more must be reported;
- A royalty is not payable if the seller acquired the work before 9 June, 2010;
- A royalty is not payable on resales for under \$1,000;
- A royalty is not payable if it is more than 70 years from the end of the year in which the artist died;
- The scheme will be extended to artworks from countries that have similar schemes.

To learn about your obligations under the scheme as an art market professional read [this information sheet from the Copyright Agency](#).

7

What is Indigenous Cultural and Intellectual Property (ICIP)?

The Art Laws Centre of Australia provides a useful description of Indigenous Cultural and Intellectual Property or ICIP:

ICIP refers to all the rights that Indigenous people have, and want to have, to protect their traditional arts and culture.

ICIP is a short way of saying Australian “Indigenous Cultural and Intellectual Property”. Sometimes the words “Cultural Heritage” are used to mean the same thing.

The idea of ICIP is based on the principle of self-determination. ICIP is said to include the following rights:

- Right to protect traditional knowledge and sacred cultural material
- Right to ensure that traditional laws and customary obligations are respected, particularly when money is made from ICIP
 - Eg when a T-shirt is manufactured with a print of a traditional motif on it, the design should be one that is allowed to be used for this purpose.
- Right to be paid for use of ICIP, particularly if it has been used in a way which is inconsistent with traditional laws or without the community’s permission
 - Eg if someone copies traditional artwork onto fabric and sells it, then the community is compensated for the illegal use of that work.
- Right to full and proper attribution or naming of the community connected with the ICIP
- Right to prevent insulting, offensive and misleading uses of ICIP in all media



- Eg an artwork containing traditional knowledge is printed on underwear.
- Eg a large painting containing traditional knowledge is cut up by a gallery to make 10 small paintings.
- Right to control the recording of cultural customs and expressions, and language which may be essential to cultural identity, knowledge, skill and teaching about Indigenous culture
 - Eg Aboriginal and Torres Strait Island communities can place conditions on an anthropologist who wants to write a book about their languages.

See the full Arts Law Centre of Australia information sheet [here](#).

Dr Terri Janke has also developed considerable work on ICIP, including the [Protocols for using First Nations Cultural and Intellectual Property in the Arts for the Australia Council of the Arts](#).

As Dr Janke states:

The creative arts are an important means of expressing ICIP – past, present and future. For Indigenous cultures, artistic and creative expressions of ICIP are important ways of storytelling, transmitting knowledge, preserving, celebrating and expressing culture and languages, reclaiming and maintaining culture, as well as passing culture down to future generations and raising awareness about Indigenous issues.

She also describes some of the limitations to current laws protecting ICIP:

Australia's current legal framework provides limited recognition and protection of ICIP rights. There is no Australian law set up specifically to protect ICIP, so Indigenous people and communities rely on existing laws – such as intellectual property laws – to protect parts of ICIP and enforce ICIP rights.

At present Australian law does not protect:

- The underlying idea or information that is put into a work e.g., the story told in a painting;
- A style or method of art e.g., cross hatching or dot painting techniques;
- Traditional languages;
- Performances such as dance and music which have not been recorded or written down;
- Products or processes based on traditional knowledge such as traditional medicines or methods (for example, traditional methods of weaving).

The Indigenous Art Code is advocating for change in this area, including the introduction of standalone ICIP legislation.



8

What are some of the different supply chains operating in the market for Aboriginal and Torres Strait Islander art?

A supply chain refers to the various ways art travels from the artist to the consumer. There are a number of supply chain models operating in the Indigenous visual art market. The Indigenous Art Code has mapped five common supply chains active in the marketplace.

They are:

- Artist – consumer direct model
- Artist – gallery model
- Artist – licensed product model
- Artist – art centre model
- Artist – upfront dealer model

The Indigenous Art Code is currently developing resources to explain and describe these models.

9

Do I need a written agreement with any artist or art centre I work with?

The Indigenous Art Code encourages all dealers in commercial arrangements with artists and art centres to enter into written agreements.

[Templates for written agreements are available for purchase from the Arts Law Centre of Australia.](#)

Whilst entering into a written agreement is not a requirement of Indigenous Art Code Dealer Membership, there are clear requirements around the way Dealer Members must deal with artists and clearly explain any agreement (written or verbal).

We encourage you to read [the Code](#) in detail, paying particular attention to Clauses 3, 3.1, 3.2, 3.3 and 3.4. in relation to dealings with artists.

10

What does a best practice written agreement look like? Are their templates I can access?

The Indigenous Art Code encourages all dealers in commercial arrangements with artists and art centres to have written agreements.

[Templates for written agreements are available for purchase from the Arts Law Centre of Australia.](#)



There are a range of templates available including [consignment agreements](#), [licensing](#) and [gallery agreements](#) and [artist and art centre agreements](#) and other [agreements](#).

These templates reflect best practice (for example, when it comes to respecting an artist's copyright and moral rights), but whether a written agreement is best practice will also depend on commercial factors such as whether or not an artist is being fairly paid for their work. Arts organisations can also seek '[best practice](#)' advice from the Arts Law Centre of Australia, which advice is limited to terms and conditions reflecting best practice in protecting artists and the arts community:

Arts Law Centre of Australia

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

11

Should I become a Dealer Member of the Indigenous Art Code before I start working with artists or art centres?

To become a Dealer Member of the Indigenous Art Code you need to already be actively engaging in commercial trade with Aboriginal or Torres Strait Islander artists either directly or indirectly. This trade might include licensing artwork or selling original artwork or licensed products.

This means start-up businesses not yet trading in, or businesses yet to start selling, Aboriginal and Torres Strait Islander art are not eligible for Dealer Membership. Please wait until your business is trading in Aboriginal and Torres Strait Islander art before applying.

12

It is better to purchase work upfront or take work on consignment?

The Indigenous Art Code does not take a position on the best terms to enter into with artists. Instead, the IartC promotes and encourages dealers to work transparently and practice fairness in relation to the artist.

Transparency means actively and openly communicating with artists to ensure they fully understand any arrangements they enter. This involves providing all information necessary to allow artists to maintain agency and make informed decisions around any commercial dealings. Dealers should not make assumptions about what they think artists need or want to know.

Artists have the right to:

- Fully understand what is on offer (the terms of the deal). This includes having access to transparent information from dealers about who gets what percentage in the deal and a



breakdown of the entire 'money story'.

- Negotiate, ask for the deal in writing and access independent legal advice.

As a Dealer Member of the Indigenous Art Code, we ask you to regularly reflect on power imbalances that exist between yourselves and the artists you work with. When negotiating a contract or an arrangement we recommend that you consider the question – 'would I be happy to trade places with the artist in this deal?'

Reflecting on whether this is an arrangement you would accept yourself is a good starting place for considering fair treatment of the artist.

13

As a dealer how do I know I'm pricing an artist's work in a way that ensures the artist is being treated fairly?

The Indigenous Art Code does not provide advice on pricing.

Instead, the IartC promotes and encourages transparency and fairness for the artist.

Transparency means actively and openly communicating with artists to ensure they fully understand any arrangements they enter. This involves providing all information necessary to allow artists to maintain agency and make informed decisions around any commercial dealings. Dealers should not make assumptions about what they think artists need or want to know.

Artists have the right to:

- Fully understand what is on offer (the terms of the deal). This includes having access to transparent information from dealers about who gets what percentage in the deal and a breakdown of the entire 'money story'.
- Negotiate, ask for the deal in writing and access independent legal advice.

As a Dealer Member of the Indigenous Art Code we ask you to regularly reflect on power imbalances that exist between yourselves and the artists you work with. When negotiating a contract or an arrangement we recommend that you consider the question – 'would I be happy to trade places with the artist in this deal?'

Reflecting on whether this is an arrangement you would accept yourself is a good starting place for considering fair treatment of the artist.

When you are pricing an artist's work that you have purchased directly from an artist, a good measure of whether your pricing is fair is to consider whether you are comfortable sharing the resale price of the artwork with the artist. Consider also, whether you are comfortable sharing the amount you paid the artist with the customer. If you aren't comfortable sharing these amounts because you think others may think they are unfair, then you need to carefully reconsider your pricing.



Businesses wanting to start dealing in artwork

14

What do I need to consider when first engaging with Aboriginal and Torres Strait Islander artists or art centres to license their work?

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.**

We encourage you to read our checklists to learn more:

[*Ethical licensing: A checklist for brands wishing to collaborate with Aboriginal and Torres Strait Islander artists*](#)

For an overview of licensing Aboriginal and Torres Strait Islander art read this factsheet [here](#).

15

What is licensing?

Licensing in the context of Aboriginal and Torres Strait Islander art means an artist gives someone (a person or a business) permission to use their artwork, design or image. A licence is a contract – a set of rules – that says how that artwork, design or image can be used, what sort of fee will be paid, and what the limitations are for that use.

A licence is for a specific use of an artist's work. A licence does not mean the person or business owns the work or can use it any way other than what is stipulated in the contract.

A licence is one of the ways in which an artist can use their copyright. Copyright is a law that says artists own the rights in their work, including the right to use – and allow others to use – their work. These rights include selling or licensing the use of their work (whether it be artwork or designs).

Copyright is a form of property created automatically every time an artist creates a work. Even if an artist sells an artwork, the copyright for that work remains with the artist regardless of who bought or owns the original artwork. Similarly, when a customer buys an original artwork, they are not buying the copyright for the artwork. A customer who buys the artwork still needs the permission of the artist (or their family/trustee) if they want to do anything with the artwork



other than exhibit it. It is rare for an artist to knowingly give away or sell the copyright in their work. In order for copyright to be assigned from an artist to a third party, it must be in writing to be legally enforceable. This is because copyright can be very valuable to an artist. Copyright lasts for 70 years after an artist's death and during this time the artist (or their family/trustee) may be able to use the copyright to generate income and benefits. In nearly all cases it is best for an artist to remain the owner of their copyright and only licence other people or businesses to use their artwork for specific projects for a fixed period of time. This ensures artists remain in control of their artwork and obtain ongoing benefits from any form of its use.

For an overview of licensing Aboriginal and Torres Strait Islander art read this factsheet [here](#).

For more information on licensing see the Arts Law Centre of Australia's factsheet [here](#).

16

What is copyright?

The Arts Law Centre of Australia describes copyright as:

Copyright is a bundle of rights in relation to certain types of subject matter. Copyright protects the subject matter from being copied or used in certain ways without the copyright owner's permission.

As such, copyright is a mechanism for artists to protect and monetise their creativity. Copyright protects two categories of subject matter: 'works', being literary works (textual material), dramatic works, musical works and artistic works; and 'subject matter other than works', being sound recordings, films, television and sound broadcasts and published editions.

Copyright does not protect ideas, but instead it protects the particular expression of the ideas in a material form. Importantly, copyright exists separately from the physical work, and as such the sale of the physical work does not automatically include the copyright.

In Australia, as in most countries, copyright is an automatic right – it is free and there is no need to register copyright. It is not required to display the copyright symbol , but it is a good idea to do so together with the name of the copyright owner to put people on notice that the material is protected by copyright.

Learn more about copyright including what is protected, the rights of the copyright owner and dealing in copyright by reading this information sheet from the Arts Law Centre of Australia [here](#).



17

What are moral rights?

The Arts Law Centre of Australia provides some helpful information about moral rights:

Moral rights protect the personal relationship between a creator and their work even if the creator no longer owns the work, or the copyright in the work. Moral rights concern the creator's right to be properly attributed or credited, and the protection of their work from derogatory treatment.

Moral rights are personal rights contained in the 'Copyright Act 1968' that connect creators to their work. Moral rights exist in relation to artistic, literary, dramatic and musical works and films but not sound recordings. Some performers also have limited moral rights in certain live or recorded performances.

Moral rights are distinct from the economic rights included in copyright. Thus an employed artist who does not own copyright in the visual artworks created as part of his employment nevertheless has moral rights in those artworks. A musician who has sold his copyright to a record label still has moral rights in his musical compositions.

Moral rights arise automatically under the Copyright Act. There are three types of moral rights:

- *Right of attribution: this is the right of an author or artist to be identified and named as the creator of their work;*
- *Right against false attribution: this is the right of an author/artist to stop someone else being credited as the creator of their work; and*
- *Right of integrity: this is the right of an author/artist to ensure that their work is not subjected to derogatory treatment which is any act in relation to the work that is in any manner harmful to their honour or reputation.*

To learn more access the Arts Law Centre of Australia's information sheet [here](#).

18

What are Indigenous Cultural and Intellectual Property Rights?

See the response to Question 7 above.

19

How do I find an artist to work with to license their work?

The Indigenous Art Code has over 300 Artist Members (as of September 2021). Similarly, over



60 art centres are Dealer Members of the Indigenous Art Code. Each member has a profile on this website. You can search our register of Members via the [IartC homepage](#). Member profiles often list contact details or ways to learn more about the artists or art centres. You can directly approach an artist or art centre to discuss licensing their work.

Another option is to work with the [Copyright Agency](#). Many Artist Members of the Indigenous Art Code are also members of the Copyright Agency. The Copyright Agency is a not-for-profit members-based organisation that collects fees and distributes royalties to creator members for the reuse of text and images.

They have over 5,000 Aboriginal and Torres Strait Islander artist members across Australia and can assist you with permission to reproduce their artworks.

They work closely with artists and art centres in metropolitan, regional and remote communities licensing their works to a wide variety of customers. They can assist you in sourcing works for your project, ensure the artist is happy with the use and put an agreement in place.

By licensing Indigenous artwork through Copyright Agency, you can be assured that you are following best practice, respecting the artists' rights, and that the artists or beneficiaries are receiving fair payment for the use of their work.

Read about the Copyright Agency and their four steps to licensing [here](#).

[A directory of the artists they work with is here and the art centres they work with here.](#)

20

When licensing an artwork, how do I know what is a fair remuneration to the artist?

To avoid problems with licensing, it is vital that the licence terms are clear, documented and understood by everyone, regardless of language or literacy levels. Because licensing can be so different each time and has so many variables, it is hard to set out standards or benchmarks. There are some important things to think about each and every time an artist, or their representative, considers a licensing opportunity.

In order for artists to determine if the remuneration is fair they need to know and be realistic about:

- What they will earn;
- When and how they will be paid;
- What they will control;
- What they can do if they want anything to change;
- How they will be acknowledged;
- The manufacturer's costs and risks to produce the licensed product.



Artists must be fairly remunerated.

Fair means:

- Artists gaining meaningful benefit;
- 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 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 in the contract.

A clear, strong agreement is crucial. It is also important not to pressure artists into making decisions or entering into agreements quickly. They need to be provided with enough time to seek independent legal advice. It is also critical, and a requirement of Dealer Membership of [the Code](#), to allow a cooling off period (see clause 3.3).

Artists are encouraged to have all contracts independently checked. Dealers should also encourage this, as well as ensure artists are provided with enough time to make this possible. The Arts Law Centre of Australia provides a document review service available to artists:

Arts Law Centre of Australia

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

Agreements should use clear words and a form that is easily understood. Arts Law Centre of Australia also provides guidance on the elements that should be included in a strong licensing agreement:

1. **Parties:** The agreement should clearly identify the people or organisations making the promises.
2. **Licence type:** Decide whether an exclusive, sole, or non-exclusive licence is appropriate and whether there is any limitation on the artist's freedom to deal with other dealers or representatives
3. **Rights granted/licence scope:** Decide on the scope of the licence, i.e. the way that the licensee will be allowed to use the work. Accurately specifying the artwork, image or design to be used, the terms of use and all details related to the product such as timelines, quality and quantity etc.
4. **Moral rights:** Set out how the artist wants to be attributed (named) and where they want this to appear on any reproduction or promotional material. Specify that the artist's consent must be obtained to alter the artwork/image, add something to it, or change it in any way. Remember that an artist cannot sell, transfer or license moral rights.



5. **Term:** Set the time period during which the licensee may use the rights granted under the licence.
6. **Territory:** Determine the place in which the licensee may use the rights granted under the licence. Does the licensor want this place to be limited to a specific town, region or country?
7. **Payment:** Agree on the amount or amounts the licensee will pay the licensor. Payment can be a flat fee, royalties (i.e. a percentage of money received from using the rights granted under the licence) or both. Artists should be provided with information around pricing, such as the wholesale price, retail price and any other relevant prices. Artists can seek advice from organisations such as Copyright Agency (www.copyright.com.au) about payment rates. Also consider whether any GST is payable. The agreement should make clear what regular reports to the artist on sales and payments will be provided.
8. **Termination:** There should be a clause covering what will happen if there is a breach of an important part of the agreement, and how long the licensee and the licensor has to fix the problem before either can exercise the right to end the agreement. There should also be a clause that sets out what happens when the agreement ends.
9. **Evidence:** A record of the agreement should be kept. Two copies of the agreement can be created so that the licensor and the licensee can each have a signed original.

For further information from the Arts Law Centre of Australia about licensing read [here](#).

For more information about licensing Aboriginal and Torres Strait Islander art read [here](#).

Are there standard or best practice rates for licensing an artist's work?

There is no standard fee arrangement in licensing. This is because there are many different factors in a licensing arrangement and every situation is unique. These variables include how an artist's artwork or design will be used (including things like size and number of products), how long an artist's work will be used for, whether the licence is a one-off or will cover a range of uses, the territory the licence covers (e.g. local, Australia or worldwide) and what sort of other uses might be included (for example, using the works to promote the product on social media or in advertising).

Because there are so many variables in a licensing arrangements, it can be difficult for artists (or their representatives) to know if they are being paid properly. This highlights the importance of both parties getting legal or other professional advice.

For more information about licensing Aboriginal and Torres Strait Islander art read [here](#).



22

Do I need a licence every time I reproduce an artist's work?

Yes. A licence is for a specific use of an artist's work. A licence does not mean the person or business owns the work or can use it any way other than what is written in the contract.

A licence is a contract, a set of rules, that says how that artwork's image can be used and what sort of fee will be paid for that use. For any issue that sits outside what has been agreed to, a new licence needs to be negotiated.

For more information about licensing Aboriginal and Torres Strait Islander art read [here](#).

23

If I buy an artwork, can I make copies of the artwork or otherwise reproduce the artwork?

No. When a customer or a dealer buys an original artwork, they are not buying the copyright of the artwork or any rights other than the ownership of the physical work. A customer who buys the artwork still needs the permission of the artist (or their family/trustee) if they want to do anything with the artwork other than exhibit it. This permission is granted via a licence. See Question 15 for information on licensing artists' work.

24

What is the difference between a licensor, licensee and a licence?

Under Australian law, a 'licence' will arise where the 'licensor' (the creator) grants to a 'licensee' the right to use or do some other act in relation to the property or right of the licensor.

In relation to licensing Aboriginal and Torres Strait Islander art, the licensor is typically the artist or other copyright holder, and the licensee is typically the business or institution that wishes to obtain a licence to reproduce the artwork.

25

How should I ensure artists are given the opportunity to access independent legal advice on any agreements they enter with me?

You can encourage artists to seek independent legal advice by providing them with the contact details for the Arts Law Centre of Australia which is able to assist artists with free or low-cost legal advice:



Arts Law Centre of Australia

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

It is also important not to pressure artists into making decisions or entering into agreements quickly. They need to be provided with enough time to seek independent legal advice. It is also critical and a requirement of Dealer Membership of [the Code](#) to allow a cooling off period (see clause 3.3).

Dealer Membership of the Indigenous Art Code

26

I previously signed up as a member of the Indigenous Art Code but can no longer see my name and profile on the website? What does this mean?

Current Dealer and Supporter Members of the Indigenous Art Code renew their membership annually and pay a yearly membership fee. If you have not paid a membership fee for this calendar year or provided updated information about your business as requested, then your membership will not be current. Only current members can be searched via the member register on the IartC website. If you are not a current member but would like to become one, please apply for Membership of the Indigenous Art Code [here](#).

27

Who is eligible for Dealer Membership of the Indigenous Art Code?

To be eligible for Dealer Membership of the Indigenous Art Code you need to be an individual or organisation *currently trading* in Aboriginal and Torres Strait Islander art.

This means to become an IartC Dealer Member, applicants must:

- Be an Agent; or
- Be a person or organisation who is not an Agent but who:
- acquires Artwork, or
 - carries on business involving the acquisition of Artwork for re-supply by means of sale or other distribution such as a licensing, which may include but is not limited to a wholesaler, retailer, art gallery, auction house or art centre.
- Submit a completed application using the correct form to the Secretary.



- Pay any applicable fee.
- Indigenous and non-Indigenous owned organisations and businesses are eligible, including art centres, private art dealers, art galleries, retail outlets and businesses selling Aboriginal and Torres Strait Islander artwork. This includes businesses licensing Aboriginal and Torres Strait Islander artists' work on products and merchandise.

For more information read the IartC Membership Policy [here](#).

28

Who isn't eligible for Dealer Membership of the Indigenous Art Code?

Businesses or individuals not currently trading in Aboriginal and Torres Strait Islander art are not eligible for Dealer membership of the Indigenous Art Code. This includes start-up businesses not yet trading or businesses yet to start selling Aboriginal and Torres Strait Islander art. Please wait until your business is trading in Aboriginal and Torres Strait Islander art before applying.

If you are a business or individual that works with, or supports, Aboriginal and Torres Strait Islander artists or communities, but isn't engaged in commercial trade you may be eligible for Supporter Membership. Read about the different membership types [here](#).

Dealer Members of the Indigenous Art Code need to treat and pay artists fairly. Any business who is currently engaging in any of the following conduct does not meet the requirements of IartC Dealer Membership:

- I. Unfair or unreasonable conduct;
- II. Undue pressure or influence, including threats;
- III. Not acting in good faith;
- IV. Paying an artist by means of alcohol or drugs;
- V. Unfairly taking advantage of, or exploiting, an artist;
- VI. 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.

29

Can non-Indigenous businesses become Dealer Members of the Indigenous Art Code?

Indigenous and non-Indigenous owned organisations and businesses are eligible for Dealer Membership of the Indigenous Art Code. This includes individual non-Indigenous art dealers, art galleries, retail outlets and businesses selling Aboriginal and Torres Strait Islander artwork, including businesses licensing Aboriginal and Torres Strait Islander artists work on products and merchandise.



The Indigenous Art Code is about supporting a fair go for Aboriginal and Torres Strait Islander Artists. The Code is a voluntary industry code of conduct administered by the Indigenous Art Code Ltd (IartC).

Dealer Members must adhere to the Code to ensure they are using fair, ethical and transparent practices when engaging with Aboriginal and Torres Strait Islander Artists. The Code provides clear standards for dealings between art dealers and Aboriginal and Torres Strait Islander Artists to deliver:

- a) fair and ethical trade in Artwork;
- b) transparency in the process of promotion and sale of Artwork; and
- c) that disputes arising under the Code are dealt with efficiently and fairly.

As part of the transparent promotion and sale of Artwork, Dealer Members are expected to be transparent and open about their business and ownership structures, including whether they are Indigenous-owned. Indigenous-owned businesses are identified as such on the IartC website. You can search our register of Members via the [IartC homepage](#).

30

Why should I become a Dealer Member?

Fair business is good business.

Dealer Membership of the Indigenous Art Code:

Supports a fair go for artists by:

- Demonstrating to Aboriginal and Torres Strait Islander artists that you are committed to respecting and valuing their art and culture.
- Ensuring your business practices adhere to the Code requirements means artists are treated respectfully, fairly and transparently in all commercial arrangements they enter with you.

Gives confidence to consumers by:

- Demonstrating to consumers that you are committed to fair and ethical trade.

Develops and strengthens the market by:

- Contributing to the continued growth of a fair and sustainable market for Indigenous visual art.

Offers promotion and brand affiliation for your business by:



- Allowing you to promote your Dealer Membership through your website and at your physical place of business using a window decal and point of sale stand (provided by the IartC) and other promotional material in line with the IartC Style Guide.
- Adding your business name to the IartC register of members and a business profile is featured on the IartC website.

31

I'm not a member but I still work ethically. Why should I become a member of the Indigenous Art Code?

The Indigenous Art Code does not comment on the business practices of non members. We recognise that businesses may be operating fairly and ethically without being Dealer Members.

We do encourage all businesses trading in Aboriginal and Torres Strait Islander art to become Dealer Members.

Dealer Membership of the Indigenous Art Code:

Supports a fair go for artists by:

- Demonstrating to Aboriginal and Torres Strait Islander artists that you are committed to respecting and valuing their art and culture.
- Ensuring your business practices adhere to the Code requirements means artists are treated respectfully, fairly and transparently in all commercial arrangements they enter with you.

Gives confidence to consumers by:

- Demonstrating to consumers that you are committed to fair and ethical trade.

Develops and strengthens the market by:

- Contributing to the continued growth of a fair and sustainable market for Indigenous visual art.

Offers promotion and brand affiliation for your business by:

- Allowing you to promote your Dealer Membership through your website and at your physical place of business using a window decal and point of sale stand (provided by the IartC) and other promotional material in line with the IartC Style Guide.
- Adding your business name to the IartC register of members and a business profile is featured on the IartC website.



32

What information is required to complete the application form?

To complete an application for Dealer Membership you will be required to:

- Supply information about your business structure, trading name and ABN
- Supply a list of directors and related entities
- Supply contact details and details of any social media pages or online trading sites
- Supply a list of any suppliers including artists or other businesses that you've dealt with in the last three years
- Disclose whether your business has ever been under any external evaluation / scrutiny

In addition to providing the above information, the application will ask questions that seek to assess whether your business is adhering to the following requirements of The Code:

- Acting fairly, honestly, professionally and in good conscience (Code s.2.1)
- Not engaging in misleading or deceptive conduct (Code s.2.2)
- Respecting Indigenous Cultural Practices and Artist's Rights, including to:
 - respecting the Artist's Moral Rights and copyright in the Artwork
 - obtaining consent of the artists before reproducing the Artworks (or permitting a third party to reproduce the Artwork) in any form
 - not using the name and/or image of Artists who are deceased unless permission has been granted or best endeavours have been used to obtain permission (Code s.2.3)
 - 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 Indigenous community and/or Traditional Owners consider to be secret/sacred and/or restricted.
- Taking care of Artwork (Code s.2.4)
- Creating Code Certificates (Code s.5.1 – 5.4).
- Use best endeavours to resolve complaints (Code s.7)
- Providing a clear explanation of the Agreement (Code s.3.1)
- Ensuring there is a written or verbal Agreement between the Dealer Member and an Artist in relation to Artwork that covers the key terms outlined in the Code (Code s.3.2)
- Respecting an Artist's cooling off rights to terminate an Agreement (Code s.3.3)
- Providing details of payment for the Artwork (Code s.3.4)
- Keeping records of all dealings with Artists and making this available to Artists upon request (Code s.4).

33

How long does it take for Dealer Member applications to be assessed?

At present the Indigenous Art Code receives a high volume of applications. Applications that are incomplete or are missing necessary information cannot be assessed and will further delay the processing of the application.



Staff work to progress applications as quickly as possible, but we appreciate your patience if there is some delay in getting back to you. Please contact membership@indigenousartcode.org should you wish to enquire about the status of your application.

34

How are applications assessed?

Applications are assessed via the following process:

- 1. Application**
- 2. IartC review**
 - a. Preliminary eligibility check
 - b. Detailed membership assessment
 - c. Board decision
- 3. Notification**

Further detail on the process is provided [here](#).



INDIGENOUS
ART CODE

Frequently Asked Questions: Consumers



Indigenous Art Code

This information is for guidance only. It is not legal advice.

35

Why is the Indigenous Art Code in place and how does it support artists?

In 2007, a Senate Inquiry into Australia's Indigenous visual arts industry recommended the establishment of a voluntary industry code of conduct (the Indigenous Art Code, known as the Code) to guide ethical commerce in the sector.

Based on these recommendations and after a period of public consultation the Code was launched in August 2009 with the Indigenous Art Code Limited (IartC) established in 2010 to administer the Code.

The purpose of *the Code* is to establish standards for dealings between Dealers and Artists to ensure:

- a) fair and ethical trade in Artwork;
- b) transparency in the process of promotion and sale of Artwork; and
- c) that disputes arising under the Code are dealt with efficiently and fairly.

The purpose of *the IartC* (the public company that administers the Code) is to promote the fair and ethical trade between Aboriginal and Torres Strait Islander Artists and art dealers by:

- a) Promoting the adoption of the Indigenous Art Code;
- b) Encouraging dealers to become signatories to, and comply with [the Code](#);
- c) Advocating for improved standards, policies and practices to sustain the ethical trade of Aboriginal and Torres Strait Islander artworks;
- d) In other ways, supporting the growth of a fair, healthy and respectful market for Aboriginal and Torres Strait Islander art.

Almost 15 years on from the Senate Inquiry the IartC finds that most dealers in Aboriginal and Torres Strait Islander art have high ethical standards and a genuine sense of responsibility to Indigenous artists and their communities. Many are members of the Indigenous Art Code and display our logo at their premises and on marketing materials. We encourage all buyers to look for it whenever and wherever they buy Indigenous art.

Regrettably, there are some individuals and businesses' selling Aboriginal art (and fake Aboriginal art) who do not respect Indigenous culture or the wellbeing of the artists and their communities.

The IartC provides clear advice and information to Aboriginal and Torres Strait Islander Artist Members and potential members on commercial arrangements they might enter in relation to



their artwork. We work to educate and support to Aboriginal and Torres Strait Islander Artists to understand their rights and refer them to appropriate organisations as required.

36

How do I find members of the Indigenous Art Code?

You can search for Artist, Dealer, and Supporter Members of the Indigenous Art Code via our member register on the [IartC homepage](#).

Many Dealer and Artist Members of the Indigenous Art Code display our logo at their premises and on marketing materials. We encourage all buyers to look for it whenever and wherever they buy Aboriginal and Torres Strait Islander art.

37

If I am going to buy an artwork from an artist, should I only buy from Artist Members of the Indigenous Art Code?

No. The Indigenous Art Code has over 300 Artist Members (as of September 2021), however there are thousands of Aboriginal and Torres Strait Islander artists from across the country. We do not suggest you limit your engagement with artists only to those who are Artist Members of the Indigenous Art Code.

As Artist Members are not signatories to [The Code](#), their Membership functions as a means of adding their voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

38

What is the Code vs the IartC?

[The Code](#) is a voluntary industry Code of Conduct launched in 2009, following a 2007 Senate Inquiry into the Indigenous Visual Arts industry.

The purpose of *the Code* is to establish standards for dealings between Dealers and Artists to ensure:

- a) fair and ethical trade in Artwork;
- b) transparency in the process of promotion and sale of Artwork; and
- c) that disputes arising under the Code are dealt with efficiently and fairly.

The Indigenous Art Code (IartC) is the public company that was established in 2010 to administer The Code.



The purpose of *the IartC* is to promote the fair and ethical trade between Aboriginal and Torres Strait Islander Artists and art dealers by:

- a) Promoting the adoption of the Indigenous Art Code;
- b) Encouraging dealers to become signatories to, and comply with the Code;
- c) Advocating for improved standards, policies and practices to sustain the ethical trade of Aboriginal and Torres Strait Islander artworks;
- d) In other ways, supporting the growth of a fair, healthy and respectful market for Aboriginal and Torres Strait Islander art.

39

What is a voluntary industry code of conduct?

A voluntary industry code of conduct is a 'non-prescribed' code meaning it is not mandatory or prescribed under law. The Australian Consumer and Competition Commission (ACCC) defines these kinds of Codes as follows:

Non-prescribed voluntary industry codes of conduct set out specific standards of conduct for an industry including how to deal with its members and customers. These codes only apply to those who sign up to them. The ACCC may be able to assist your industry in developing a voluntary code by providing general guidance. We do not have a role in drafting voluntary codes.

To learn about voluntary codes of conduct read [here](#).

40

How can I support the Indigenous Art Code?

There are several ways you can support the Indigenous Art Code:

1. **Become a Supporter Member.** Supporter Members are individuals or business who are not trading in Aboriginal and Torres Strait Islander art, but who are supportive of the objects of the Code and wish to add their voice to the call for fair and ethical trade with Aboriginal and Torres Strait Islander artists, and transparency in the promotion and sale of artwork. Apply for Supporter Membership [here](#).
2. **Purchase Aboriginal and Torres Strait Islander art from our Members.** Search our member register via the [IartC homepage](#).



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How is the Indigenous Art Code governed?

lartC is a limited liability public company governed by a Board of Directors. Members of the Board are drawn from the Aboriginal and Torres Strait Islander Arts industry and the wider community. The Board is independent of government and administered under the *Australian Corporations Act 2001*.

The [lartC Constitution](#) allows for the following Board composition:

- up to 4 commercial art dealers who are lartC Dealer Members and are elected by lartC Members;
- up to 3 Indigenous artists who are appointed by the Board;
- up to 2 artists' resource organisation representatives who are appointed by the Board;
- up to 8 representatives with legal, arts, business or consumer knowledge and experience who are appointed by the Board.

View profiles of the Indigenous Art Code board [here](#).

42

Who is the Indigenous Art Code?

The Indigenous Art Code is a small organisation with a national remit. As a limited liability public company it is governed by a Board of Directors. Members of the Board are drawn from the Aboriginal and Torres Strait Islander Arts industry and the wider community. The Board is independent of government and administered under the *Australian Corporations Act 2001*. The CEO is located in Sydney with Board representation from across Australia. We support our artists and our Members across all states and territories and regularly visit artists in their studios, art centres and attend industry events.

View profiles of the Indigenous Art Code board [here](#).

Read the Constitution of the lartC [here](#).

43

Where is the Indigenous Art Code located?

The Indigenous Art Code is a small organisation with a national remit. The CEO is located in Sydney with Board representation from across Australia. We support our artists and our Members across all states and territories and regularly visit artists in their studios, art centres and attend industry events.



Ethical purchasing

44

How does purchasing Aboriginal and Torres Strait Islander art ethically support artists?

For many Aboriginal and Torres Strait Islander artists art is a lifeline. It is an expression of their culture and heritage and maintains and sustains their relationship to Country, sky and waters. It is also important financially and helps to support artists and their families. In many communities, art sales are the main source of income.

Making sure you always buy ethically is not just about protecting the buyer's investment. It's a means of respecting the world's oldest living culture, securing a sustainable future for Australia's Indigenous art industry and ensuring artists are paid and treated fairly.

The Indigenous Art Code encourages buyers to take an active and engaged role in ensuring the artwork they purchase comes from ethical sources and that artists are paid and treated fairly by those that trade in their work. Buyers, can and should, play a part in ensuring Aboriginal and Torres Strait Islander artists get a fair go. When buying art, we urge you to buy what you love but make sure artists are treated ethically in the process.

45

How can I be sure I'm purchasing Aboriginal and Torres Strait Islander art ethically?

We encourage consumers to look for and purchase from members of the Indigenous Art Code (IartC). Dealer members of the Indigenous Art Code must adhere to, and demonstrate a commitment to, upholding the ethical standards laid out in the Code. Read the Code [here](#).

A register of all current Indigenous Art Code members is accessible via the [IartC homepage](#).

We also encourage consumers irrespective of how and where they purchase artwork by Aboriginal and Torres Strait Islander artists to ask questions, do their research and inform themselves about the artists and their communities.

Irrespective of where you buy art, we suggest you ask lots of questions:

Three questions to start with are:

1. **Who is the artist?**
2. **Where is the artist from?**
3. **How does the artist get paid?**



Some other questions to consider:

- How did the artwork or product come to be in a gallery or shop/available for purchase?
- If it is a reproduction of an artist's work, how are royalties or licensing fees paid to the artist?
- How long has the business been in operation? If it's suddenly appeared from nowhere, where were they before?
- Is your business/the business you're visiting a specialist in Aboriginal and/or Torres Strait Islander art? One or two pieces in amongst other art or souvenirs can sometimes be a warning sign.
- Is your gallery/this dealer a member of the Indigenous Art Code? If yes, you know it has agreed to follow the rules and guidelines laid out in the Code.

Ethical galleries and dealers will also be willing and able to answer questions in any of the following areas:

- About the artist – his or her other work, history and community.
- About the art centre – where is it? How long has the gallery been working with them? Does this artist always work through this art centre?
- How does the gallery source its art generally and how does it pay the artists?
- How much of the sale price goes to the artist?

Artists have a right to know the 'money story' for their art and buyers can ask too. Most ethical dealers are open about their business models. Many get their work from art centres on 'consignment' and pay the art centres a fixed percentage when they sell it. Some dealers pay a fair price to artists up front; this price is a percentage of what they know the retail price of the work will be.

Some unscrupulous dealers pay artists a small amount for the work up front, sometimes exploiting artists in a vulnerable position. They go on to charge inflated retail prices for the work. While not illegal, the Indigenous Art Code does not consider this to be ethical practice as, in some instances, artists are not given honest information about the true market value of their work.

Use your instincts. If the gallery owner is evasive about an artwork's provenance or their relationship with the artist, it may be a signal to walk away.

There are also some specific things to look out for that can be warning signs of unethical practices:

- A collection of works unconnected by theme, region, language or culture.
- Merchandise, such as bags, scarves, jewellery and artefacts, that is manufactured overseas and does not attribute an artist. A bone China cup manufactured overseas and licensed fairly to the artist is ethical. A bone China cup manufactured overseas which is not licensed by an Aboriginal artist is not.
- Will the gallery 'do a deal'? Ethical galleries usually work on a fixed price model with a consistent percentage returned to the art centre and artist. Offers of a discount to close the sale can be a cause for concern.
- Does the gallery try to prove the provenance of artworks using photos of artists holding the work, rather than official certificates of authenticity?



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How do I know the sale price of the artwork is fair to the artist?

It can be difficult to know for sure. A dealer who has fair and transparent agreement with the artists they work with won't shy away from answering your questions. While the dealer might not tell you exact details of the payment, they should be comfortable telling where and how they sourced the work including:

- Whether the work has been consigned to the gallery, meaning a percentage of the amount you pay the gallery or dealer will be paid to the artist. You can ask what percentage the artists will receive.
- If the dealer or gallery purchased the work from the artist upfront, what was the artist paid? Note: if the dealer has purchased the artwork upfront, they are carrying some of the risk because there is no guarantee they will sell the work. However, as a consumer if you are paying, for example, \$3000 for a painting and the artist received \$500 you might want to think about the fairness of that price disparity. At times dealers may respond to this question by saying they "paid the price the artist asked for". The question here is 'did the artist have access to transparent information in order to know how much the dealer intended to sell the work for, before they agreed to the price they would be paid?'
- If you are purchasing work from a gallery where the artwork is being resold to you (not on consignment) for over \$1000 you can also ask the dealer if they report resales to the Resale Royalty Scheme. See Question 6 to learn more about the Resale Royalty Scheme and the obligations of dealers to report sales.

If a dealer is resistant to providing transparent information about the agreement they have in place and how they work with and pay artists, then perhaps reconsider your purchase. At the end of the day, you may need to go with your gut.

As a consumer who is concerned with the fair treatment of artists you have a right to know how they have been paid.

47

What should I do if I bought an artwork and afterwards discovered the business wasn't dealing ethically with the artist?

The most powerful thing you can do to ensure you support artists and their communities is to make sure your next purchase comes from a dealer who sources their work ethically. Read Question 45 for advice on how to do this.

If you believe misrepresentations have been made to you about the work you can lodge a consumer issue with the Australian Competition and Consumer Commission (ACCC) [here](#). Visit [here](#) for details of what the ACCC can and can't do for consumers.



48

What questions should I ask when purchasing an artwork or licensed product?

We encourage consumers irrespective of how and where they purchase artwork by Aboriginal and Torres Strait Islander artists to ask questions, do their research and inform themselves about the artists and their communities. Irrespective of where you buy art, we suggest you ask lots of questions.

Three questions to start with are:

1. **Who is the artist?**
2. **Where is the artist from?**
3. **How does the artist get paid?**

Some other questions to consider:

- How did the artwork or product come to be in a gallery or shop/available for purchase?
- If it is a reproduction of an artist's work, how are royalties or licensing fees paid to the artist?
- How long has the business been in operation? If it's suddenly appeared from nowhere, where were they before?
- Is your business/the business you're visiting a specialist in Aboriginal and/or Torres Strait Islander art? One or two pieces in amongst other art or souvenirs can sometimes be a warning sign.
- Is your gallery/this dealer a member of the Indigenous Art Code? If yes, you know it has agreed to follow the rules and guidelines laid out in the Code.

49

How do I tell the difference between a product that has fake art on it and a product that has artwork fairly licensed on it?

Fake art in the context of Aboriginal and Torres Strait Islander art are products that are for sale that 'look and feel' like Indigenous art but have no connection to Aboriginal and Torres Strait Islander culture or communities.

These commercially produced goods, mostly aimed at the tourist market, are often made from nontraditional materials and feature inauthentic and culturally inappropriate and appropriative designs. They range from bamboo didgeridoos to key rings to paintings.

Just because a product is produced overseas or industrially produced does not necessarily mean it is fake art. Some Aboriginal and Torres Strait Islander artists fairly license their original and authentic artworks to be reproduced on products manufactured overseas. Often an artist will enter into a fair and transparent commercial agreement with a business which will have products produced overseas. These arrangements involve agreements between the artist and the business producing the product, in which the artist is fairly remunerated.



A bone China cup featuring Aboriginal or Torres Strait Islander art that is manufactured overseas and licensed fairly by the artist is ethical. A bone China cup featuring Aboriginal or Torres Strait Islander art that is manufactured overseas and is not licensed by an Aboriginal artist is not.

A tell-tale sign of a fairly licensed product is one that attributes the artwork to the artist and provides details about them. Often the information that comes with the product will also provide details of the royalties the artist receives. We encourage consumers to ask questions around the specifics of these arrangements. Generally, ethical businesses will have no trouble providing further detail.

Be wary of products that do not provide details about the artist and that use generic or elusive terms such as 'Aboriginal style'. Be wary also of products that do not name any artists but claim Aboriginal artists contributed to the product. If in doubt, ask. If the answer is unclear or does not provide clarity on who the artist is, how they contributed to the work and what remuneration they have received, we suggest you walk away from the purchase.

50

How do I know the artist has been treated fairly when the product has no label, certificate of authenticity or other information?

Any artwork, product or merchandise featuring the work of an artist should be attributed to that artist. Artists have moral rights to be properly attributed or credited for their artwork (unless it is reasonable in all the circumstances not to do so). Read Question 17 for more information on moral rights. If the name of the artist is not present somewhere on either the product itself or the packaging or accompanying documentation, it could be sign that the work is fake or inauthentic art. See Question 49 relating to this.

Beyond the name of the artist, high value art and products usually come with other documentation. Dealer Members of the Indigenous Art Code are required to provide a Code Certificate of authenticity for any work over the value of \$250. As a buyer you should insist on it.

We encourage consumers to ask lots of questions of any dealer they plan to purchase from, particularly if this information is not provided on the documentation that comes along with the work.

Three questions to start with are:

- 1. Who is the artist?**
- 2. Where is the artist from?**
- 3. How does the artist get paid?**

Some other questions to consider:

- How did the artwork or product come to be in a gallery or shop/available for purchase?



- If it is a reproduction of an artist's work, how are royalties or licensing fees paid to the artist?
- How long has the business been in operation? If it's suddenly appeared from nowhere, where were they before?
- Is your business/the business you're visiting a specialist in Aboriginal and/or Torres Strait Islander art? One or two pieces in amongst other art or souvenirs can sometimes be a warning sign.
- Is your gallery/this dealer a member of the Indigenous Art Code? If yes, you know it has agreed to follow the rules and guidelines laid out in the Code.

51

How do I know if a business is Indigenous-owned?

Indigenous-owned businesses that are Members of the Indigenous Art Code are clearly identified as such on their member profile. You can also search the member register via the [IartC homepage](#) for Indigenous-owned businesses.

Most Indigenous-owned businesses will refer to this somewhere on their website or other information relating to their business. Often the community or Country the business owners are connected to will be listed. Many Indigenous-owned businesses are also members of [Supply Nation](#) – a register of Aboriginal and Torres Strait Islander-owned businesses.

If you are unclear about whether a business is Indigenous-owned, we suggest you ask. This question could refer to what community or Country the business owners are connected to.

52

How do I have artwork I own valued?

The Indigenous Art Code is not able to provide valuations of artwork. Artwork valuations can only be done by a qualified valuer.

The Australian Government provides a list of valuers approved under their Cultural Gifts Program. You can access this list [here](#). Some Dealer Members of the IartC are approved valuers and can be found on the list.

53

There is a catalogue number or written code on Aboriginal and Torres Strait Islander artwork that I own. What does it mean?

Numeric or alpha-numeric codes written on artwork typically relate to a catalogue number assigned to work by the artist, art centre, dealer or gallery at the time of its creation. They do not relate to the *Indigenous Art Code*.



These codes or catalogue numbers refer to the database of the artist, art centre, dealer or gallery. There is not a central database for these codes nationally. Usually, the certificate of authenticity provided with the work will refer to the catalogue number and also indicate who assigned the catalogue number to the work. The works are assigned the code so that the artist, art centre, dealer or gallery can refer to their database if needed at a later stage. If you need more information you need to seek this from the artist, art centre, dealer or gallery which assigned the code or from which you purchased the work.

54

Should I only buy an artwork where the artist signed the work?

Some Aboriginal and Torres Strait Islander artists sign their work, many do not. The absence of a signature on an artwork does not necessarily indicate it is not by the artist stated on other documentation. Within the market for Aboriginal and Torres Strait Islander art, certificates of authenticity are the most used method to verify in writing that the artwork for sale is the original work of the artist named. Certificates of authenticity are most often a single page document that are intended to ensure the integrity of statements about authenticity. Photographs of an artist creating or holding an artwork are not certificates of authenticity. Read Question 5 for more information of certificates of authenticity.

55

Should I only buy an artwork if I am given a photograph of the artist holding or painting the work?

Certificates of authenticity are the most widely used and accepted form of documentation used in the Indigenous visual art market. Certificates of Authenticity verify in writing that the artwork for sale is the original work of the artist named. Certificates of authenticity are most often a single page document that are intended to ensure the integrity of statements about authenticity. Photographs of an artist creating or holding an artwork are not certificates of authenticity. Read Question 5 for more information of certificates of authenticity.

Certificates of authenticity are widely accepted by national institutions (such as the National Gallery of Australia) for the purposes of donating artwork. Most major auction houses will only accept certificates of authenticity for the purposes of selling a work on the secondary market.

Dealer Members of the Indigenous Art Code are required to provide a Code Certificate of authenticity for any work over the value of \$250. As a buyer, you should insist on it from any dealer you purchase artwork from.

We encourage consumers to ask lots of questions of any dealer they plan to purchase from, particularly if this information is not provided on the documentation that comes along with the work.



Three questions to start with are:

1. **Who is the artist?**
2. **Where is the artist from?**
3. **How does the artist get paid?**

56

How do I find out more information on an old artwork I own which I have with very little documentation for?

On occasion consumers contact the Indigenous Art Code to help them find out information about artworks they own but do not know the history of. The Indigenous Art Code is a voluntary industry code of conduct and any numeric or alpha-numeric codes or catalogue numbers on artworks do not relate to the Indigenous Art Code.

The Indigenous Art Code is a membership-based organisation with countless connections to artists and dealers of Aboriginal and Torres Strait Islander artwork. Researching artists and artworks for consumers sits outside our remit.

If you know the name of the gallery, art centre or dealer the work was purchased from we suggest you reach out to them. Usually they require the catalogue number (if any) written on the artwork and the artist's name to search their database. See Question 53 for more information on catalogue numbers.

Otherwise, we suggest you research online any information you know about the artist, the work or the region they are from. A qualified art valuer may also be able to assist you to attribute or research the work. See Question 52 for information on how to have your artwork valued.

57

What is carpetbagging?

Generally 'carpetbagging' is understood to mean an outsider who seeks power or success presumptuously. In the inquiry into Australia's Indigenous visual arts and craft sector in June, 2007 [chapter 8.15 included the following reference to carpetbagging:](#)

8.15 Many participants in discussion about Indigenous art use 'carpetbagger' as a pejorative term in describing dealers involved in the exploitation of Indigenous artists. The term carpetbagger can be applied to particular individuals, backyard dealers, commercial gallery owners, private agents, or persons operating other legitimate businesses such as car yards or motels.^[10] Such a person is usually not Indigenous and seeks to obtain art from an artist at a price well below what that person knows or ought to know is a reasonable market price, with the intention of selling it on at a substantial profit.^[11] It often involves taking advantage of the artist's age, poverty, medical condition



or other disadvantage. Carpetbagging has become a problem through the combination of the great success of Indigenous art^[12] and the weak economic bargaining position in which Indigenous people frequently find themselves.^[13]

The term 'carpetbagger' is often understood to denote a dealer who operates unfairly or unethically. Whilst this conduct may not be illegal that doesn't mean it is considered fair. Dealers should not exploit power imbalances or leverage decisions made by artists particularly when those decisions are made from a position of financial desperation.

58

What are some of the different supply chains operating in the market for Aboriginal and Torres Strait Islander art?

See Question 8.

59

Where should I go to purchase Indigenous art ethically?

We encourage consumers to look for and purchase from members of the Indigenous Art Code (IartC). Dealer Members of the Indigenous Art Code must adhere to, and demonstrate a commitment to, upholding the ethical standards laid out in the Code. Read the Code [here](#).

A register of all current Indigenous Art Code members is accessible via the [IartC homepage](#).

The Indigenous Art Code has close to 200 Artist Members (as of September 2021), however there are thousands of Aboriginal and Torres Strait Islander artists from across the country. We do not suggest you limit your engagement with artists to only those who are Artist Members of the Indigenous Art Code.

As Artist Members are not signatories to the Code, their Membership functions as a means of adding their voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

We encourage you to research Aboriginal and Torres Strait Islander art and culture widely, including from the region in which you live and work. Purchasing from Aboriginal and Torres Strait Islander artists directly is a great way to support their artistic practice.

We also encourage consumers irrespective of how and where they purchase artwork by Aboriginal and Torres Strait Islander artists to ask questions, do their research and inform themselves about the artists and their communities.

Irrespective of where you buy art, we suggest you ask lots of questions:



Three questions to start with are:

- 1. Who is the artist?**
- 2. Where is the artist from?**
- 3. How does the artist get paid?**

Some other questions to consider:

- How did the artwork or product come to be in a gallery or shop/available for purchase?
- If it is a reproduction of an artist's work, how are royalties or licensing fees paid to the artist?
- How long has the business been in operation? If it's suddenly appeared from nowhere, where were they before?
- Is your business/the business you're visiting a specialist in Aboriginal and/or Torres Strait Islander art? One or two pieces in amongst other art or souvenirs can sometimes be a warning sign.
- Is your gallery/this dealer a member of the Indigenous Art Code? If yes, you know it has agreed to follow the rules and guidelines laid out in the Code.

60

What if the gallery I want to purchase an artwork from isn't a member of the Indigenous Art Code, should I still buy from them?

The Indigenous Art Code does not comment on the business practices of non-members. We recognise that businesses may be operating fairly and ethically without being Dealer Members.

Irrespective of whether you buy artwork from a member of the Indigenous Art Code, we encourage all consumers to do their research, be active, engaged and ask questions.

Three questions to start with are:

- 1. Who is the artist?**
- 2. Where is the artist from?**
- 3. How does the artist get paid?**

Some other questions to consider:

- How did the artwork or product come to be in a gallery or shop/available for purchase?
- If it is a reproduction of an artist's work, how are royalties or licensing fees paid to the artist?
- How long has the business been in operation? If it's suddenly appeared from nowhere, where were they before?
- Is your business/the business you're visiting a specialist in Aboriginal and/or Torres Strait Islander art? One or two pieces in amongst other art or souvenirs can sometimes be a warning sign.
- Is your gallery/this dealer a member of the Indigenous Art Code? If yes, you know it has agreed to follow the rules and guidelines laid out in the Code.



What channels should be avoided if buyers want to purchase art ethically and why?

The Indigenous Art Code do not provide lists of where not to buy, instead we encourage all consumers to do their research, be active, engaged and ask questions.

Irrespective of the kind of gallery or the place of sale, the following three questions can help you feel confident you are buying from an ethical dealer. Any reputable dealer will be happy to answer them. There are some 'red flags' or warning signs we encourage consumers to look out for. Some questions to can ask a gallery or dealer before you purchase are are:

1. Is your gallery a specialist in Aboriginal art?

One or two pieces in amongst other art or global souvenirs can sometimes be a warning sign.

2. How long has your gallery been around?

If it's suddenly appeared from nowhere, where were they before? And where will they be in the near future?

3. Is your gallery a member of the Indigenous Art Code?

If yes, you know it has signed the Indigenous Australian Art Commercial Code of Conduct.

Ethical galleries and dealers will also be willing and able to answer questions in any of the following areas:

- About the artist – his or her other work, history and community.
- About the art centre – where is it? How long has the gallery been working with them? Does this artist always work through this art centre?
- How does the gallery source its art generally and how does it pay the artists?
- How much of the sale price goes to the artist?

Artists have a right to know the 'money story' for their art and buyers can ask too. Most ethical dealers are open about their business models. Many get their work from art centres and artists on 'consignment' and pay the art centres a fixed percentage when they sell it. Some dealers pay a fair price to artists up front; this price is proportional to what they know the retail price of the work will be.

Some unscrupulous dealers pay artists a small amount for the work up front, often exploiting artists in a vulnerable position. They go on to charge inflated retail prices for the work. While not illegal, the Indigenous Art Code does not consider this ethical practice as, in some instances, artists are not given honest information about the true market value of their work.

Use your instincts. If the gallery owner is evasive about an artwork's provenance or their relationship with the artist, it may be a signal to walk away.



There are also some specific things to look out for that can be warning signs of unethical practices:

- A collection of works unconnected by theme, region, language or culture.
- Will the gallery 'do a deal'? Ethical galleries usually work on a fixed price model with a consistent percentage returned to the art centre and artist. Offers of a discount to close the sale can be a cause for concern.
- Does the gallery try to prove the provenance of artworks using photos of artists holding the work, rather than official authentication certificates? Does the gallery use poor quality images of the artists rather than a quality portrait of the artist?

62

Why does the art centre take a commission?

See Question 3 for detailed information on the purpose and functions of art centres.

An art centre is a non-profit organisation owned by its members, a collective of artists. Art centres exist to support artists, provide professional development and facilitate the production, marketing and sale of work in the marketplace. As a not for profit, art centres provide services to their community and do not operate to make a profit. Any 'profit' generated is invested back into the services the organisation provides to its members.

What is widely understood as the 'art centre model' is based around a percentage of the sale price of works. Usually 50–60% of the sale prices of an artwork goes to the artist, with the remainder (usually 40–50%) going back into the artists-owned business. This percentage or commission is paid to enable the business to keep operating and to continue providing services to the artists and community. Most art centres do receive some Government funding and the income generated by the commission supplements this funding, allowing for a greater range of services and activities that benefit community members. Commission income typically supports the art centre to employ staff, operate artist facilities and amenities, maintain vehicles, take artists on trips to Country and to markets and sell the works through art fairs, exhibitions, and other events.

Art centres are self-determined Indigenous-owned and controlled businesses.

63

Why would you buy from a gallery when you can go direct to the artists or the art centre?

Most art centres and many independent Aboriginal and Torres Strait Islander artists have long-term and established relationships with commercial galleries. Art centres and artists often enter these relationships to enable opportunities for exhibition, sale and marketing of their work, career development and access to audiences, which would not be possible without the support



of the gallery. Some art centres do not have the resources and staff capacity to offer the customer service necessary to make sales to customers from the general public.

Art centres and the galleries that represent them operate under a range of arrangements. Galleries often present and curate highly sought-after work that has been provided to the gallery by the artist or art centre for themed or special exhibitions. This work is often not available directly from the artist or art centre.

Some artists and art centres sell work directly to consumers, as well as through a commercial gallery. Others prefer to focus on artwork creation and development and leave the marketing and sale of the work entirely to the gallery.

Do your own research about where the work you'd like to purchase is available. The most important thing is that any work purchased comes from ethical sources and that artists are paid and treated fairly by those that deal in their work.

64

What is a primary sale?

The primary sale is the first sale of artwork between the artist and another party. This could be directly to a consumer or to a gallery or to a dealer who may pay the artist upfront for the work. When artwork is held on consignment by an art centre or gallery on behalf of the artist, the primary sale does not occur until the ownership of the work is transferred. This happens when the work is sold to the customer and the artist receives payment for the work.

65

How is an auction house different to a gallery?

An auction house is a company that facilitates the buying and selling of art either via in-person or online auctions. Rather than referring to the facility that an auction takes place in, an auction house most commonly refers to the company running the auction.

Auction houses sell artwork through a competitive auction process in which buyers place bids on the work.

Auction houses differ from galleries in that they typically do not present exhibitions or facilitate other opportunities (such as presentations at art fairs) that develop the careers of the artists whose artwork is sold. Where galleries typically work with a stable of artists, auction houses most often sell work from a range of artists depending on what artwork is made available to them.



66

Do public institutions (like the National Gallery of Victoria) sell Indigenous artwork?

Major state and national public art institutions (such as the National Gallery of Victoria) are primarily concerned with the exhibition, presentation and collecting of art. They may have a retail shop that sells merchandise related to exhibitions and their collections as well as other small one-off items such as jewellery. However, outside the limited retail setting they do not sell artwork to consumers. A number of public institutions are Dealer Members of the IartC. This membership relates to their retail outlets.

67

What's the difference between an Aboriginal or Torres Strait Islander-owned art centre operating an artists' studio and a commercial gallery operating an artists' studio?

Aboriginal and Torres Strait Islander-owned art centres are Indigenous governed businesses, most often led by a board made up of Indigenous artists. Artwork is produced in studios operated by these art centres or artists working in their communities, in their homes and on Country. Artwork is typically sold on consignment on behalf of the artists, either directly to the consumer or through galleries.

Some commercial galleries and art dealers also operate studios where Aboriginal and Torres Strait Islander artists may create artwork for sale by the gallery or, in some instances, the gallery may wholesale the work on to other dealers. The primary difference between the two is that the commercial gallery is almost always a privately (usually non-Indigenous owned) business, which the artist has no ownership or governance role in. Any profits made are returned to the private owners of the business. An art centre is a not-for-profit that returns benefits to its members (the Indigenous artists).

See Question 3 for more information about art centres.

Authenticity and Provenance

68

What is provenance?

In Aboriginal and Torres Strait Islander art, provenance is crucial to fair and ethical trade and refers to the history or chronology of ownership of an artwork. Proof of provenance includes documentation such as a certificate of authenticity (see Question 5 relating to certificates of authenticity), as well as other documentation, such as receipts, that demonstrate the various owners of an artwork since it left the possession of the artist.



The origin and history of ownership of a piece of art is both its birth certificate and passport; providing confidence of its authenticity.

As stated [in Chapter 8, 8.3 of the report](#) of the 2007 Senate Inquiry into the Indigenous visual arts industry:

The provenance of artworks is generally determined through two complementary but separate mechanisms: a certificate of provenance and some kind of proof of sale. It is important to note that the two mechanisms are independent: legitimate proof of a sale does not guarantee the provenance of the piece, nor does a certificate of provenance guarantee that the piece has been sold through legitimate means for a reasonable price.

As indicated, provenance is not the same as an ethical supply chain. Knowing the various owners of a work is one thing but, even where this history is documented, it does not mean artists were not treated or paid unfairly. Fairness relates to the transparency of the initial transaction between the artist and dealer and whether or not any power imbalances were exploited in those transactions.

69

What is a certificate of authenticity?

See Question 5.

70

Is purchasing work that comes directly from art centres the most ethical way to buy?

There are thousands of Aboriginal and Torres Strait Islander artists from across the country. Many are members of Aboriginal and Torres Strait Islander-owned art centres and many work independently of any art centre structure and support.

There are five main supply chain models operating in the Indigenous visual art market. (See Question 8 about the supply chain models).

The Indigenous Art Code does not suggest one supply chain is superior to another; ethical practice is found in the execution of the associated business model. We encourage buyers to take an active and engaged role in learning about the business model of any dealer you plan to purchase from and the way it is applied to the relationship the business has with the artist.

Different models suit different artists. What is most important is that artists can exercise agency in decision-making regarding commercial agreements and that they can negotiate the market on their own terms, whatever they may be.



There are also many Aboriginal and Torres Strait Islander artists across Australia who work independently of any art centre structure and support. They are individual artists who rely on income from their art making and the relationships they have with dealers and commercial galleries. Their livelihoods are dependent on working with dealers and galleries or making direct sales.

We encourage consumers, however they purchase artwork, to take an active and engaged role in ensuring artists are treated and paid fairly. See Question 45 for advice on how to buy art ethically.

71

Is purchasing work directly from the artist the most ethical way to buy?

This question is related to Question 70. It is suggested that you read that question alongside this one.

In addition to what is stated in Question 70, it is worth noting that Aboriginal and Torres Strait Islander people and their communities are varied and diverse. For some artists, selling directly to the consumer is their preferred method. Others prefer to work with art centres, galleries and other dealers. They may prefer to focus on their own art practice and leave the marketing and sale of their work to their art centre or the gallery or dealer they work with. Other factors such as access to technology, English literacy and location may come into play. Some artists may work through multiple channels.

The Indigenous Art Code does not suggest one supply chain is superior to another; ethical practice is found in the execution of the associated business model. We encourage buyers to take an active and engaged role in learning about the business model that the artist engages with and the way it is applied to the relationship the business has with the artist. See Question 45 for advice on how to buy art ethically.

72

What is 'fake art'?

'Fake art' in relation to the [Fake Art Harms Culture campaign](#) are products that 'look and feel' like Indigenous art but have no connection to Aboriginal and Torres Strait Islander culture or communities.

These commercially produced goods, mostly aimed at the tourist market, are often made from nontraditional materials and feature inauthentic and culturally inappropriate and appropriative designs. They can range from bamboo didgeridoos to key rings to paintings.

Just because a product is manufactured overseas or industrially produced does not necessarily mean it is fake art. A bone China cup featuring Aboriginal or Torres Strait Islander art that is



manufactured overseas and is not licensed by an Aboriginal artist is not.

'Fake art' can also be forgeries of Aboriginal and Torres Strait Islander art. These could be copies of original works of art reproduced without the permission of the artist, or works of art produced by someone other than the artist named on the work. These 'fakes', however, are not nearly as present as those in the souvenir market.

73 How do I know the work I'm purchasing isn't fake?

See Question 49.

74 What do I do if I see 'fake art' being sold?

'Fake art' in relation to the [Fake Art Harms Culture campaign](#) are products that 'look and feel' like Indigenous art but have no connection to Aboriginal and Torres Strait Islander culture or communities. If these artworks or products are labelled as being Aboriginal or Indigenous art but are in fact created without the input of an Aboriginal or Torres Strait Islander person, then this could be regarded as misleading or deceptive conduct.

'Fake art' is also present in the context of forged Aboriginal and Torres Strait Islander art. These forgeries could include copies of original works of art or art produced by someone other than the artist named. These 'fakes' are not, however, nearly as present as those in the souvenir market.

We recommend you report such instances of 'fake art' to the Australian Consumer and Competition Commission (ACCC) via this [link](#). It is advisable to gather as much information as you can to lodge the report, including screenshots of the products in question.

artC realises that in some instances the current law may be inadequate in this area. The artC has lobbied since 2016 for a change in Australian Consumer Law, as well as the introduction of standalone Indigenous Cultural and Intellectual Property rights, to better combat the proliferation of fake art.

Read more about the Fake Art Harms Culture Campaign [here](#).

75 Is there a law against selling 'fake art'?

The law that currently exists protects consumers against misleading or deceptive conduct. This means it is against Australian Consumer Law to represent to a consumer that art or products



are created by an Aboriginal or Torres Strait Islander person when they have no connection to Aboriginal and Torres Strait Islander culture or communities.

artC understands there may be cases where the law is inadequate in this area. There are limited protections currently available under Australian law for Indigenous Cultural and Intellectual Property (ICIP). (See Question 7 for more detailed information on ICIP).

Australia does not have adequate laws to protect ICIP. At present Australia law does not protect:

- The underlying idea or information that is put into a work e.g. the story told in a painting;
- A style or method of art e.g. cross hatching or dot painting techniques;
- Traditional languages;
- Performances such as dance and music which have not been recorded or written down;
- Products or processes based on traditional knowledge such as traditional medicines or methods (for example, traditional methods of weaving).

The Indigenous Art Code is advocating for change in this area, including the introduction of standalone ICIP legislation.

As Dr Terri Janke states in [Protocols for using First Nations Cultural and Intellectual Property in the Arts for the Australia Council of the Arts](#):

Indigenous people are the primary guardians of their cultures and should be given the opportunity to interpret and present their own cultures.

The Indigenous Art Code also acknowledges that Aboriginal and Torres Strait Islander people have customary law and cultural obligations relating to artistic expression that exist outside Western legal frameworks.



INDIGENOUS
ART CODE

Frequently Asked Questions: Artists



Artist Membership of the Indigenous Art Code

This information is for guidance only. It is not legal advice.

77

What is the Indigenous Art Code?

The Indigenous Art Code Ltd (IartC) administers a voluntary industry Code of Conduct, known as [the Code](#). The Code is a set of rules and guidelines that Dealer Members (both Indigenous and non-Indigenous businesses) commit to follow to ensure ethical practices and fair treatment of artists.

There are three categories of membership of the Indigenous Art Code: Artist, Dealer and Supporter.

The purpose of *the Code* is to establish standards for dealings between Dealers and Artists to ensure:

- a) fair and ethical trade in Artwork;
- b) transparency in the process of promotion and sale of Artwork; and
- c) that disputes arising under the Code are dealt with efficiently and fairly.

The Indigenous Art Code (IartC) is the public company that was established in 2010 to administer The Code.

The purpose of *the IartC* is to promote the fair and ethical trade between Aboriginal and Torres Strait Islander Artists and art dealers by:

- a) Promoting the adoption of the Indigenous Art Code
- b) Encouraging dealers to become signatories to, and comply with the Code
- c) Advocating for improved standards, policies and practices to sustain the ethical trade of Aboriginal and Torres Strait Islander artworks
- d) In other ways, supporting the growth of a fair, healthy and respectful market for Aboriginal and Torres Strait Islander art.

78

What is Artist Membership of the Indigenous Art Code?

The Indigenous Art Code is based on a membership structure. There are three categories of membership of the Indigenous Art Code: Artist, Dealer and Supporter.

Artist Members of the Indigenous Art Code are practising Aboriginal and Torres Strait Islander



visual artists who want to add their voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

The Indigenous Art Code Ltd (IartC) administers a voluntary industry Code of Conduct, known as [the Code](#). The Code is a set of rules and guidelines that Dealer Members (both Indigenous and non- Indigenous businesses) commit to follow to ensure ethical practices and fair treatment of artists. Artist Members are not signatories to the Code. This means their membership is not based on compliance to the Code of Conduct. Instead, their membership is concerned with promoting their fair treatment of artists within the industry.

- Members are Aboriginal and Torres Strait Islander practising visual artists who are selling artwork only of their own creation;
- Being an Artist Member is about artists adding their voice to the call for fair and ethical treatment within the Indigenous visual arts industry;
- Members can be involved in the Company (the Indigenous Art Code Ltd or IartC), including by voting at meetings;
- If you are an artist who does not currently have your own website, your Artist Membership profile can be a useful way to share and promote yourself as an artist;
- Artists Members are kept up to date with our news and activities and we share resources and opportunities with them;
- Artist Membership is free.

You can apply for Artist Membership [here](#).

79

Why should I become an Artist Member?

As a practicing Aboriginal and Torres Strait Islander visual artist, you should apply for Artist Membership of the Indigenous Art Code if you wish to add your voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

In the words of Stephanie Parkin, the Chair of the Indigenous Art Code:

The Indigenous Art Code is about a fair go for Aboriginal and Torres Strait Islander artists. All artists have a voice, and as an Artist Member of the Indigenous Art Code you are playing an important role in advocating for fairness for yourself and others.

The Indigenous Art Code Ltd (IartC) administers a voluntary industry Code of Conduct, known as [the Code](#). The Code is a set of rules and guidelines that Dealer Members (both Indigenous and non- Indigenous businesses) commit to follow to ensure ethical practices and fair treatment of artists.

Artist Members are not signatories to The Code. This means their membership is not based on



compliance to the Code of Conduct. Instead, their membership is concerned with promoting the fair treatment of artists within the industry.

The benefits of Artist Membership include:

- Members can be involved in the Company (the Indigenous Art Code Ltd or IartC), including by voting at meetings;
- If you are an artist who does not currently have your own website, your Artist Membership profile can be a useful way to share and promote yourself as an artist;
- As an Artist Member we will keep you up to date with our news and activities and share resources and opportunities with you;
- Artist Membership is free.

You can apply for Artist Membership [here](#).

80

Does being an Artist Member provide proof that my artwork is authentic?

No. Artist Membership is not a label or mark of authenticity. Artist Membership of the Indigenous Art Code is about practicing Aboriginal and Torres Strait Islander visual artists adding their voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

The Artist Membership application assessment does not evaluate or provide endorsement or accreditation of an artist.

Assessment of an application for Artist Membership is based only on whether the applicant is:

- An Aboriginal and/or Torres Strait Islander person;
- A practicing visual artist;
- Only selling their own artwork.

Artist Members are not signatories to the Code, meaning their membership is not based on compliance to the Code. Only Dealer Members commit to abide by the ethical standards set out in the Code and therefore only Dealer Members' applications are assessed based on whether their businesses, practices and behaviour complies to the Code.

In the words of Stephanie Parkin, the Chair of the Indigenous Art Code.

The Indigenous Art Code is about a fair go for Aboriginal and Torres Strait Islander artists. All artists have a voice, and as an Artist Member of the Indigenous Art Code you are playing an important role in advocating for fairness for yourself and others.



81

Who is eligible for Artist Membership?

To be eligible for Artist Membership you must:

- Be an Aboriginal and/or Torres Strait Islander person, defined as a person who:
- identifies as Aboriginal and/or Torres Strait Islander, and
- is recognised as such by members of the community with which the person identifies.
- Be an Artist and produce Artwork including but not limited to paintings, drawings, artists' books, woodwork, ceramics, glass, jewellery, sculpture, fibre works, printmaking, photography, installation, video or multimedia works.
- Be over the age of 18 years.

You don't necessarily need to be selling your artwork to become an Artist Member (you can be creating artwork for your own enjoyment or to gift to others). If you are selling artwork you can't be selling other artist's work.

You can apply for Artist Membership [here](#).

82

Who isn't eligible for Artist Membership?

- Artists that do not identify as Aboriginal and/or Torres Strait Islander;
- An Aboriginal and Torres Strait Islander person who either:
 - Isn't creating their own visual art;
 - Or is selling artwork by other artists, including family members. If you are selling artwork by other Aboriginal and Torres Strait Islander artists, you need to apply for Dealer Membership of the Indigenous Art Code. Learn more about Dealer Membership [here](#). Once Dealer Membership is granted you may then apply for Artist Membership, if the other eligibility criteria are met.

83

Do I need to be an Artist Member to get support or assistance from the Indigenous Art Code?

The Indigenous Art Code encourages all Aboriginal and Torres Strait Islander practicing visual artists who are selling artwork only of your own creation to apply for Artist Membership. Being an Artist Member is about adding your voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

The Indigenous Art Code will provide assistance and information to all Aboriginal and Torres Strait Islander artists irrespective of their membership status.



Please contact us via 0438637862 or info@indigenousartcode.org if you need assistance or support.

The Indigenous Art Code does not provide legal advice. For legal advice all artists will be referred to:

Arts Law Centre of Australia

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

84

Does the Indigenous Art Code provide legal advice?

No. The Indigenous Art Code does not provide legal advice. For legal advice all artists will be referred to the Arts Law Centre of Australia for low-cost or free legal advice. The Indigenous Art Code can assist artists by providing a referral to Arts Law or artists can contact Arts Law directly:

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

[Arts Law can review contracts and other documentation for artists to explain what they say. This service is free for Aboriginal and Torres Strait Islander artists.](#)

85

Is the Indigenous Art Code a digital code that proves the authenticity of my work?

No. The word code in the name 'Indigenous Art Code' refers to the voluntary industry Code of Conduct, known as [the Code](#), administered by the Indigenous Art Code Ltd (IartC). The Code is a set of rules and guidelines that Dealer Members (both Indigenous and non-Indigenous businesses) commit to follow to ensure ethical practices and fair treatment of artists.

The Indigenous Art Code is not a label or mark of authenticity. Artist Membership of the Indigenous Art Code is about practicing Aboriginal and Torres Strait Islander visual artists adding their voice to the call for fair and ethical treatment of artists within the Indigenous visual arts industry.

The Artist Membership application assessment does not evaluate or provide endorsement or accreditation of an artist.

Assessment of an application for Artist Membership is based only on whether the applicant is:



- An Aboriginal and/or Torres Strait Islander person;
- A practising visual artist;
- Only selling their own artwork.

Artist Members are not signatories to the Code, meaning their membership is not based on compliance to the Code. Only Dealer Members commit to abide by the ethical standards set out in the Code and therefore only Dealer Members' applications are assessed based on whether their businesses, practices and behaviour complies to the Code.

Artist Members are provided with the IartC logo for use in line with the IartC Style Guide to promote their own artistic practice.

See Question 38 to learn more about the Indigenous Art Code.

[See here to read the Code.](#)

See Question 39 to learn about what a voluntary industry code of conduct is.

86

What is Dealer Membership of the Indigenous Art Code?

Dealer Membership is a membership status sought by Indigenous and non-Indigenous owned organisations and businesses currently trading in Aboriginal and Torres Strait Islander art. Art centres, private art dealers, art galleries, retail outlets and businesses selling Aboriginal and Torres Strait Islander artwork, including businesses licensing Aboriginal and Torres Strait Islander artists work on products and merchandise, are all eligible.

Dealer Members are signatories to [The Code](#) and commit 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 they must act fairly, honestly, professionally and in good conscience in all direct or indirect dealings with artists.

87

Should I only work with dealers who are members of the Indigenous Art Code?

The Indigenous Art Code does not comment on the business practices of non-Dealer Members. We recognise that businesses may be operating fairly and ethically without being Dealer Members.

The Indigenous Art Code is about supporting a fair go for artists irrespective of the membership status of the businesses you choose to work with.



The Indigenous Art Code is here to support and assist artists to be in control and to maintain agency by making informed decisions about what arrangements they enter and who they choose to work with. Remember, as an artist, you can always reach out to the Indigenous Art Code for information or support via 0438637862 or info@indigenousartcode.org

The Indigenous Art Code wants to see artists treated and paid fairly, their art valued properly, and their Indigenous Cultural and Intellectual Property Rights respected.

To know what is fair, you need to fully understand what is on offer (the terms of the deal). You have the right to access transparent information from dealers you are working with about who gets what percentage in the deal, a breakdown of the entire 'money story'. You also have a right to negotiate, the right to ask for the deal in writing and the right to access independent legal advice.

If you need assistance accessing transparent information from dealers you are working with please reach out to us.

If you need independent legal advice, see Question 84.

88

Can non-Indigenous businesses be Dealer Members of the Indigenous Art Code?

See Question 29.

ICIP, copyright and moral rights

89

What is ICIP?

See Question 7.

90

What is copyright?

See Question 16.



91

What are moral rights?

See Question 17.

92

What do I do if another artist is creating artwork that looks like mine?

If you believe that another artist is copying your artwork, it is suggested that you seek legal advice from the Arts Law Centre of Australia.

The Indigenous Art Code does not provide legal advice. For legal advice all artists will be referred to the Arts Law Centre of Australia for low-cost or free legal advice. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

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What do I do if someone has reproduced my work without my permission?

If you believe your artwork has been reproduced without your permission, it is suggested that you seek legal advice from the Arts Law Centre of Australia. If you are a member of the Copyright Agency you can also direct your enquiry to them.

The Indigenous Art Code does not provide legal advice. For legal advice all artists will be referred to the Arts Law Centre of Australia for low-cost or free legal advice. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:

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Authenticity and provenance

94

What is a certificate of authenticity? How do I get one for my artwork? Can I create my own?

'Certificate of authenticity' is the term used widely in the Indigenous visual art market to describe the documentation provided to a consumer, usually by dealers of Aboriginal and Torres Strait Islander art, including art centres, to verify in writing that the artwork for sale is the original work of the artist named. Most often they are a single page document that is intended to ensure the integrity of statements about authenticity. Photographs of an artist creating or holding an artwork are not certificates of authenticity.

Artists who sell artwork directly to the consumer often make their own certificates of authenticity. Artists who create work with the support of an art centre or work with a gallery or dealer often have certificates of authenticity created for them by those businesses.

[For more information refer to the information sheet on certificates of authenticity from the Arts Law Centre of Australia](#)

If you are working with a business that has Dealer Membership of the Indigenous Art Code then Clause 5.1 of [the Code](#) (of which they are a signatory) stipulates that Dealer Members of the Indigenous Art Code who receives Artwork directly from an Artist over the value of \$250 must create a Code Certificate for that Artwork. A Code Certificate is a certificate of authenticity created by a Dealer Member of the Indigenous Art Code that includes the following:

- I. A statement 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. Identify the Dealer Member and state that they are 'Signatory to the Indigenous Art Code'; and
- VI. Contain a signed declaration from the Dealer Member confirming the accuracy of the details set out in the Code Certificate.

95

What is provenance?

See Question 68.



Can the Indigenous Art Code stop non-Indigenous artists creating artwork that 'looks and feels' like Indigenous art?

No, this would require a change in the law specifically around Indigenous Cultural and Intellectual Property (ICIP) (see Question 7 for more detailed information on ICIP). This is a change that the Indigenous Art Code has long advocated for, and it is what led to the [Fake Art Harms Culture campaign](#).

As Dr Terri Janke states in [Protocols for using First Nations Cultural and Intellectual Property in the Arts for the Australia Council of the Arts](#):

Indigenous people are the primary guardians of their cultures and should be given the opportunity to interpret and present their own cultures.

Australia (non-Indigenous) does not have adequate laws to protect ICIP. At present Australian law does not protect:

- The underlying idea or information that is put into a work e.g. the story told in a painting;
- A style or method of art e.g. cross hatching or dot painting techniques;
- Traditional languages;
- Performances such as dance and music which have not been recorded or written down;
- Products or processes based on traditional knowledge such as traditional medicines or methods (for example, traditional methods of weaving).

In 2016 the Indigenous Art Code, alongside the Arts Law Centre of Australia and the Copyright Agency, launched the Fake Art Harms Culture campaign. This campaign lobbied the Australian Government to address the proliferation of fake Aboriginal and Torres Strait Islander art and art products, including through the introduction of legislation to stop the production and sale of artworks and artefacts appropriating Aboriginal and Torres Strait Islander culture and designs.

Despite the significant achievements of the campaign in raising awareness of the issue (outlined below) we are yet to see the introduction of legislation that removes inauthentic Aboriginal and Torres Strait Islander arts and crafts from the Australian market. We are also yet to see better regulation of licensing for Aboriginal and Torres Strait Islander artists or a commitment to protection of Indigenous Cultural and Intellectual Property more broadly.

In September 2020 the Australian Government made an in-principle commitment to begin a consultation process to develop stand-alone legislation that would protect Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.

The Indigenous Art Code acknowledges the work of Aboriginal and Torres Strait Islander artists and communities which have lobbied governments for decades to address this issue. The Fake Art Harms Culture campaign follows on from the work by these artists and communities. The Indigenous Art Code also acknowledges that Aboriginal and Torres Strait Islander people have customary law and cultural obligations relating to artistic expression that exist outside Western legal frameworks.



Key Developments of the Fake Art Harms Culture campaign to date

2016

- Indigenous Art Code, Arts Law Centre of Australia and Copyright Agency launched Fake Art Harms Culture campaign at Darwin Aboriginal Art Fair.

2017

- Senator Bob Katter twice introduced the Private Members Bill into Parliament, which sought to amend the Australian Consumer Law by preventing non-Aboriginal and Torres Strait Islander persons from benefitting from the sale of Aboriginal and Torres Strait Islander art and souvenirs.
- Almost 1000 post cards sent to then Prime Minister Malcolm Turnbull.
- Minister for Indigenous Affairs, Senator Nigel Scullion, referred an inquiry to the House of Representatives Standing Committee on Indigenous Affairs about the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia.
- The Indigenous Art Code made a submission to the House of Representatives Standing Committee on Indigenous Affairs Inquiry along with 161 other organisations and individuals.

2017-2019

- The House of Representatives Standing Committee on Indigenous Affairs conducted the Inquiry. The report on the impact of inauthentic art and craft in the style of First Nations peoples was tabled in December 2018.
- The Fake Art Harms Culture campaign gains significant media coverage, including a 60 Minutes investigation.

2018

- The Australian Competition and Consumer Commission (ACCC) commenced legal proceedings against Birubi Art, a souvenir manufacturer, for misleading consumers into purchasing fake Aboriginal art products.

2019

- In June, the Federal Court found that Birubi Art had falsely claimed that products it sold were hand painted by Australian Aboriginal persons and made in Australia. The Federal Court ordered Birubi to pay a \$2.3 million penalty.



- Senator Hanson-Young introduced the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) into Parliament (2019 Bill).
- Roughly 1000 postcards sent to Prime Minister Scott Morrison from the Darwin Aboriginal Art Fair, calling for changes to the law.
- Arts Law, Indigenous Art Code and the Copyright Agency, assisted by solicitor Ted Hill, appeared before the Senate Committee to present an alternate version of legislation, which would deal with secret and sacred objects, and include regulations for licensing authentic Indigenous art for products and merchandise.

2020

- [Australian Government released their response to the Report on the impact of inauthentic art and craft in the style of First Nations peoples.](#) This included an in-principle commitment to begin a consultation process to develop stand-alone legislation that would protect Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.

2021

- [Productivity Commission has commenced a study to examine the value, nature and structure of markets for Aboriginal and Torres Strait Islander arts and crafts, and policies to](#)

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What is the Fake Art Harms Culture campaign and what has been its key achievements?

In 2016 in response to Aboriginal and Torres Strait Islander artists asking 'what are we going to do about fake art and souvenirs?' the Indigenous Art Code, alongside Arts Law Centre of Australia and the Copyright Agency, launched the Fake Art Harms Culture campaign. This campaign lobbied the Australian Government to address the proliferation of fake Aboriginal and Torres Strait Islander art and art products, including through the introduction of legislation to stop the production and sale of artworks and artefacts appropriating Aboriginal and Torres Strait Islander culture and designs.

Key developments/achievements of the campaign to date

2016

- Indigenous Art Code, Arts Law Centre of Australia and Copyright Agency launched Fake Art Harms Culture campaign at Darwin Aboriginal Art Fair.



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- Senator Bob Katter twice introduced the Private Members Bill into Parliament, which sought to amend the Australian Consumer Law by preventing non-Aboriginal and Torres Strait Islander persons from benefitting from the sale of Aboriginal and Torres Strait Islander art and souvenirs.
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- Arts Law, Indigenous Art Code and the Copyright Agency, assisted by solicitor Ted Hill, appeared before the Senate Committee to present an alternate version of legislation, which



would deal with secret and sacred objects, and include regulations for licensing authentic Indigenous art for products and merchandise.

2020

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2021

- [Productivity Commission has commenced a study to examine the value, nature and structure of markets for Aboriginal and Torres Strait Islander arts and crafts, and policies to address deficiencies in these markets.](#)

Despite the significant achievements of the campaign in raising awareness of the issue we are yet to see the introduction of legislation to remove inauthentic Aboriginal and Torres Strait Islander arts and crafts from the Australian market. We are also yet to see better regulation of licensing for Aboriginal and Torres Strait Islander artists or a commitment to protection of Indigenous Cultural and Intellectual Property more broadly.

The in-principle commitment made by the Australian Government in September 2020 to begin a consultation process to develop stand-alone legislation that would protect Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions, is encouraging. The Indigenous Art Code continues to advocate for change in this area.

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What is fake art?

See Question 72.

99

How do I report fake art?

See Question 74.

100

Is there a law against fake art?

See Question 75.



Fair pay, fair Pricing, fair deals

101

What should I do if a dealer tells me I have a debt or book up and need to keep painting until the debt is paid?

The Indigenous Art Code wants to see artists treated and paid fairly, your art valued properly, and your Indigenous Cultural and Intellectual Property Rights respected.

The Indigenous Art Code supports artists to have access to transparent information about any commercial arrangements you enter. Considering that many Aboriginal and Torres Strait Islander artists often do not enter a negotiation on a level playing field, the onus of actively working to correct this power imbalance rests with the dealer wishing to engage with them. Artists need to have agency in decision-making and power imbalances that exist between artists and dealers should not be exploited.

If you are told by a dealer that you have debt or book up and need to continue working with them until the debt is cleared, the first step is to ask them for all the details in writing of all artworks you have created for them since you started working with them. Having a clear picture of the work you have made and the money that has been received will help you decide how to best proceed. Ask for a list of all artworks created. Make sure that the list includes the title, size and date of creation for each work. In addition to that you should ask for the following information in writing:

- The amounts you were paid for each artwork and how and when you received the payment;
- The sale price of each artwork;
- Details of any deductions made by the dealer (such as for meals, accommodation, materials).

If you have asked for this information and it hasn't been supplied or hasn't been supplied in a way that makes sense to you, you can reach out to the Indigenous Art Code for assistance. Or, if you aren't able to ask the dealer directly yourself, the Indigenous Art Code may be able to help you communicate with the dealer or communicate on your behalf. Please contact the Indigenous Art Code on 0438637862 or info@indigenousartcode.org for assistance or more

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A dealer paid me upfront for my work and now they are selling it for a lot more than they paid me. Is this fair? Can they do that?

The Indigenous Art Code wants to see artists treated and paid fairly, your art valued, and your Indigenous Cultural and Intellectual Property Rights respected.



The Indigenous Art Code is aware of some unscrupulous dealers who pay artists a small amount for the artwork up front and go on to charge inflated retail prices for the work without letting the artist know the amount they intend to sell the work for. While not illegal, the Indigenous Art Code does not consider this ethical practice, as the lack of transparency around the intended sale price does not allow the artist to make an informed choice.

For an artist to make an informed choice around a fair price for their artwork they need to fully understand what is on offer (the terms of the deal). As an artist, you have the right to access transparent information from dealers you are working with about who gets what percentage in the deal, a breakdown of the entire 'money story'. You also have a right to negotiate, the right to ask for the deal in writing and the right to access independent legal advice.

The Indigenous Art Code regards transparency as a core pillar of ethical trading in Aboriginal and Torres Strait Islander art. Transparency means dealers need to actively and openly communicate with artists to ensure they fully understand any arrangements they enter, providing all information necessary to allow artists to maintain agency in all aspects of the relationship and make informed decisions around any commercial dealings. Dealers should not make assumptions about what they think artists need or want to know.

If you are an artist and you need assistance accessing transparent information from dealers you are working with please reach out to us via 0438637862 or info@indigenousartcode.org

If the dealer in question is a Dealer Member of the Indigenous Art Code, there may be grounds to raise a complaint or dispute against them. Please read our IartC Dealer Complaints, Disputes and Concerns Handling policy and get in touch to discuss further via 0438637862 or info@indigenousartcode.org

Also note that you may be eligible to receive a resale royalty for works purchased from you and then resold by the dealer. See Question 116 for more information on the Resale Royalty Scheme.

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How do I know if I'm being offered a fair deal?

The Indigenous Art Code wants to see artists treated and paid fairly, your art valued, and your Indigenous Cultural and Intellectual Property Rights respected.

For an artist to make an informed choice regarding a fair price/deal for their artwork they need to fully understand what is on offer (the terms of the deal). As an artist you have the right to access transparent information from dealers you are working with about who gets what percentage in the deal, a breakdown of the entire 'money story'. You also have a right to negotiate, the right to ask for the deal in writing and the right to access independent legal advice.

The Indigenous Art Code regards transparency as a core pillar of ethical trading in Aboriginal and Torres Strait Islander art. Transparency means dealers need to actively and openly communicate with artists to ensure they fully understand any arrangements they enter,



providing all information necessary to allow artists to maintain agency in all aspects of the relationship and make informed decisions around any commercial dealings. Dealers should not make assumptions about what they think artists need or want to know.

We also encourage all artists to have agreements reviewed by a lawyer prior to entering them.

The Indigenous Art Code does not provide legal advice. We can refer you to the Arts Law Centre of Australia for low-cost or free legal advice. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or you can contact Arts Law directly:

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

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How do I know what prices to set for my work?

The Indigenous Art Code cannot provide advice on pricing.

If you are an artist who is setting your own prices to sell directly to consumers, we recommend you look into joining the [National Association of the Visual Arts \(NAVA\)](#). NAVA can provide professional advice and information such as guides and factsheets on how to set your prices.

If you are selling your work outright to a dealer in order to know what a fair price is, you need to fully understand what is on offer (the terms of the deal). This includes what price they intend to sell the artwork for. As an artist you have the right to access transparent information from dealers you are working with about who gets what percentage in the deal, a breakdown of the entire 'money story'.

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Should I enter into a written agreement with any dealer I work with?

The Indigenous Art Code recommends that artists enter into fair and transparent agreements with any dealers they work with. Agreements can be either verbal or written but often the simplest way to ensure they are both fair and transparent is to enter into a written agreement that has been reviewed by an independent lawyer.

If a dealer provides you with a written agreement, we recommend you have it reviewed before agreeing to it.

The Indigenous Art Code does not provide legal advice. We refer artists to the Arts Law Centre of Australia for low-cost or free legal advice, including document reviews. The Indigenous Art



Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:

P: 1800 221 457 (toll-free)
E: artslaw@artslaw.com.au
W: www.artslaw.com.au

[Templates for written agreements are available from the Arts Law Centre of Australia.](#)

There are a range of templates available for purchase (low-cost) including [consignment agreements](#), [licensing](#) and [gallery agreements](#), [artist and art centre agreements](#) and various other [agreements](#).

If you enter into a verbal agreement, it is important that you have a complete understanding of the terms of the agreement. This means more than knowing the commission split or the amount you will receive upon sale of your artwork. You need to fully understand what is on offer (the terms of the deal). As an artist you have the right to access transparent information from dealers you are working with about who gets what percentage in the deal and a breakdown of the entire 'money story'. You also need to understand what services the dealer will be responsible for. For example, a dealer that is presenting your work in an exhibition may be responsible for paying for framing, freight, insurance, marketing and promotion and exhibition opening costs. It is important to have a clear understanding of all these elements before you agree to anything.

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How do I get help to understand any agreements before I enter into them?

If a dealer provides you with a written agreement, we recommend you have it reviewed before agreeing to it.

The Indigenous Art Code does not provide legal advice. We refer artists to the Arts Law Centre of Australia for low-cost or free legal advice, including document reviews. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:

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How do I find out more information about the dealer and business I'm planning to work with?

A good place to start is by conducting an [ABN look up](#). You can search using the ABN provided or by searching their business or entity name. This search will provide helpful information such as:

- [The entity type](#);
- Whether the business is registered for GST. This indicates the size of the business, as businesses making over \$70,000 must be registered for GST;
- Provide information on any related entities or businesses.

We also recommend you conduct some other online research, including searching for whether the business is a Dealer Member of the Indigenous Art Code.

If you have other questions about the business, including their structure and operating or business model or anything you learn from the ABN look up, we encourage you to ask the business. Transparent and ethical dealers will be able to provide you with clear information.

108

What is the Personal Property Securities Register (PPSR) and should I register artworks I consign to galleries on it?

The Arts Law Centre of Australia is a good source of information about the PPSR and what it means for Aboriginal and Torres Strait Islander artists and art centres:

[Arts Law Centre of Australia information sheet on why art centres should register on the PPSR.](#)

Arts Law provides a service to assist Indigenous art centres with registration:

Registration on the PPSR is not a simple process and to assist Art Centres, Arts Law offers advice and assistance to ensure that your registrations are effective.

Art Law's PPSA Registration Service provides Indigenous Art Centres with a low-cost service to assist with PPSR registrations so that Art Centres can take steps to better protect themselves against the risks associated with the insolvency or bankruptcy of art galleries.

If you wish to access this service, it is important that you read this information carefully: [Arts Law Centre of Australia information sheet on why art centres should register on the PPSR.](#)

Also read the Australian Government's [fact sheet on the PPSR for Indigenous artists and art centres.](#)

It is recommended that you register with the PPSR before you consign the works.



Licensing

109

What is licensing?

See Question 15.

110

How do I know how much to charge for licensing or reproductions of my work?

There is no standard fee arrangement in licensing. This is because there are many different factors in a licensing arrangement and every situation is unique. These variables include:

- How an artist's artwork or design will be used (including details such as size and number of products);
- How long an artist's work will be used for;
- Whether the licence is a one-off or will be involved in a range of applications;
- Whether the licence is exclusive or non-exclusive;
- The territory the licence covers (e.g. local, Australia or worldwide);
- What sort of other uses might be included (for example, using the works to promote the product on social media or in advertising).

As there are so many variables in a licence arrangement, it can be difficult for artists (or their representatives) to know if they are being paid properly. This highlights the importance of both parties getting legal or other professional advice.

These three examples highlight the range and complexity of licensing:

- If a product is sold nationally through a major store the artist might receive a lower percentage of the sale price. However, because of the number of high volume of products sold, this could be a lucrative contract.
- If products are sold at a modest price point and volumes and the contract covers a range of products and/or made over a period of time, this could mean mid-range fees for the artist. The fees paid might be a source of ongoing income for the artist.
- If a product is sold at low volume but a higher price point this contract might return a higher percentage of the sale price to the artist. The number of products sold is likely to be small. Often the artist receives payment for the entire production run in advance of them going on sale.

It is important for you to understand the financial reality of licensing your artwork or design. For most artists, licencing provides small amounts of semi-regular income. Very few artists generate regular or large amounts. This is because making and selling a licensed product



involves a chain of different people and businesses. Each person or business has costs such as freight, production, rent, wages, electricity and so on. The profit for each person or business is only a small part of their share of the total project and product sales.

[For more information read this fact sheet on licensing for Aboriginal and Torres Strait Islander artists.](#)

The Indigenous Art Code recommends artists seek independent advice before entering into licensing agreements.

The Indigenous Art Code encourages artists to consider [joining the Copyright Agency](#). The Copyright Agency is a not-for-profit organisation that specialises in rights management for visual artists. They help member artists look after the rights to their work and ensure they receive fair payment for its use. In addition to being eligible to receive payments from the statutory licence schemes for [education](#) and [governments](#), artist members of the Copyright Agency can also include their works in their annual licences for [business use of text and images](#), and their [visual arts pay-per-use licences](#) for applications such as merchandising, magazines and auction catalogues.

The Copyright Agency has an extensive network of licensing customers and 20 years experience in licensing negotiations and product development. If you choose to work with the Copyright Agency for assistance in management of any licensing arrangements, they can handle the negotiations, legal agreements, consultation and product development.

Alternatively, if you like to handle licensing negotiations yourself, the Indigenous Art Code recommends you have any licensing agreements reviewed by an independent lawyer.

The Indigenous Art Code does not provide legal advice. We refer artists to the Arts Law Centre of Australia for low-cost or free legal advice, including document reviews. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:

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W: www.artslaw.com.au

Is there someone who can help me negotiate licensing arrangements?

The Indigenous Art Code encourages artists to consider [joining the Copyright Agency](#). The Copyright Agency is a not-for-profit organisation that specialises in rights management for visual artists. They help member artists look after the rights to their work and ensure they receive fair payment for its use. In addition to being eligible to receive payments from the statutory licence schemes for [education](#) and [governments](#), artist members of the Copyright Agency can also include their works in their annual licences for [business use of text and](#)



[images](#), and their [visual arts pay-per-use licences](#) for applications such as merchandising, magazines and auction catalogues. Copyright Agency has an extensive network of licensing customers and 20 years in licensing negotiations and product development. If you choose to work with the Copyright Agency for assistance in management of any licensing arrangements, they can handle the negotiations, legal agreements, consultation, and product development.

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Should I enter into a written licensing agreement?

The Indigenous Art Code recommends that artists enter into fair and transparent agreements with any dealers they work with whether the agreement concerns the sale and consignment of original work or licensing. Agreements can be either verbal or written but often the simplest way to ensure they are both fair and transparent and clear to both parties, and to minimise misunderstandings, is to enter into a written agreement that is reviewed by an independent lawyer.

If a dealer provides you with a written agreement, we recommend you have it reviewed before agreeing to it.

The Indigenous Art Code does not provide legal advice. We refer artists to the Arts Law Centre of Australia for low-cost or free legal advice, including document reviews. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:

P: 1800 221 457 (toll-free)

E: artslaw@artslaw.com.au

W: www.artslaw.com.au

[Templates for written agreements are available from the Arts Law Centre of Australia.](#)

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How do I get advice to make sure I understand any agreements before I enter them?

The Indigenous Art Code recommends artists seek independent legal advice on any licensing agreements before entering them.

The Indigenous Art Code does not provide legal advice. We refer artists to the Arts Law Centre of Australia for low-cost or free legal advice, including document reviews. The Indigenous Art Code can assist artists by providing a referral to the Arts Law or artists can contact Arts Law directly:



P: 1800 221 457 (toll-free)
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Do dealers or organisations need to arrange a licence every time they reproduce my work?

Yes. A licence is for a specific use of an artist's work. A licence does not mean the person or business owns the work or can use it any way other than what is written in the contract.

A licence is a contract, a set of rules, that says how that artwork image can be used and what sort of fee will be paid for that use. For any issue that sits outside what has been agreed in the licence, a new licence needs to be negotiated.

For more information about what licensing means for Aboriginal and Torres Strait Islander artists read [here](#).

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What is the difference a licensor, licensee and a licence?

See Question 24.

Resale Royalty Scheme

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What is the Resale Royalty Scheme?

The Resale Royalty Scheme is a national scheme established by *Resale Royalty Right For Visual Artists Act of 2009*, which provides visual artists with rights similar to other creators, such as songwriters or authors, who receive royalty payments from their work. The purpose of the scheme is to recognise artists' ongoing rights in their work and provide income from the resales of their work.

The artists' resale royalty scheme started on 9 June 2010.

Under the scheme:

- Commercial resales of artworks for \$1,000 or more must be reported; and



- A 5% royalty is payable on some resales.

The Australian government appointed the [Copyright Agency](#) to manage the scheme.

Key features of the scheme:

- It applies to resales of existing as well as new works;
- It applies to a range of original artworks, included limited edition prints authorised by the artist;
- It does not apply to a private sale from one individual to another;
- All resales worth \$1,000 or more must be reported;
- A royalty is not payable if the seller acquired the work before 9 June, 2010;
- A royalty is not payable on resales worth under \$1,000;
- A royalty is not payable if it is more than 70 years from the end of the year in which the artist died;
- The scheme will be extended to artworks from countries that have similar schemes (e.g. France, Germany, UK).

For more information on the Resale Royalty Scheme read the Copyright Agency's factsheet [here](#).

Watch a short animation explaining the Resale Royalty Scheme [here](#).

Read a more extensive list of FAQs relating to the Resale Royalty Scheme [here](#).

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How do I register for the Resale Royalty Scheme?

The Copyright Agency ask that you provide your details so they can quickly reach you and pay you when you have an eligible resale. You can register your details for Resale Royalty with the Copyright Agency [here](#).

Or call the Copyright Agency on 1800 066 844 or email resale@copyright.com.au

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Will I get royalties on works sold overseas?

At present, artists do not receive royalties on works sold outside Australia. However, the *Resale Royalty Right for Visual Artists Act 2009* (the Resale Act) allows for reciprocal resale rights to be established with countries that have an operating resale royalty scheme. Under these arrangements, Australian artists would receive royalties when their eligible works are resold in reciprocating countries, and artists from reciprocating countries would receive royalty payments for their eligible artworks resold in Australia.



In June 2021, an announcement was made regarding Resale Royalty reciprocity between Australia and the United Kingdom. It took the form of the *Australia – UK Free Trade Agreement (FTA)*. Read more about this development [here](#).

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What should I do if a dealer I work with asks me to opt out of the Resale Royalty Scheme?

Artists can ask the Copyright Agency not to collect a royalty for a specific artwork resale. The artist or beneficiary must notify the Copyright Agency in writing within 21 days of the publication on the Copyright Agency's website of details of that resale. The artist can then choose to recover the Resale Royalty directly from the buyer, seller or art market professional.

Such notice needs to be given in relation to each resale of an artwork for which artists or their representatives entitled to the royalty do not want the Copyright Agency to collect the royalty. A permanent direction to the Copyright Agency not to collect the royalty for a particular artwork is not possible.

For more information we suggest you contact the Copyright Agency on 1800 066 844 or email resale@copyright.com.au

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Does a work sold on EBay attract resale royalty?

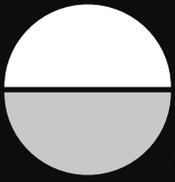
Resales on EBay fall under the same obligations as any other resale. If the resale is a commercial resale, that is an art market professional is involved, the resale should be reported to the Copyright Agency and royalty will be paid if the resale meets all eligibility criteria. See Question 6 for further information on dealer's obligations under the Resale Royalty Scheme. If an art market professional is not involved and instead the sale is between one private person to another, it is not considered a commercial resale, and does not need to be reported or a royalty paid.

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How do I know if Resale Royalties are being paid on my artwork?

You can search your name on the notice of Resales register [here](#) to see a listing of eligible resales of your work since the scheme began.

If you are registered for the Resale Royalty Scheme you should be regularly receiving royalty statements from the Copyright Agency. If you are not receiving these statements or require any more information you can contact the Copyright Agency on 1800 066 844 or email resale@copyright.com.au



INDIGENOUS
ART CODE

Frequently
Asked Questions:
Complaints,
Dispute or
Concern Handling



This information is for guidance only. It is not legal advice.

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How do I make a complaint or raise a dispute or concern about a dealer of Aboriginal and Torres Strait Islander art?

The Indigenous Art Code has a IartC Dealer Complaints, Disputes and Concerns Policy which relates to dealers that trade in Aboriginal and Torres Strait Islander art. Read the policy [here](#).

There are three categories for issues about a dealer of Aboriginal and Torres Strait Islander art that can be handled by the IartC:

1. **Complaint:** a complaint relates to a serious and formal matter (see section 5.2 of the policy) raised with IartC against a Dealer Member and therefore covered under The Code.
2. **Dispute:** a dispute refers to a concern, a difference of opinion or argument raised with IartC related to:
 - a) a Dealer Member prior to a formal complaint being raised
 - b) a dealer, organisations or individual that are not IartC members and therefore fall outside the remit of the IartC, under normal circumstances.
3. **Concern:** a concern refers to matters that are not complaints nor disputes against a Dealer Member, though the complainant may be able to be assisted through IartC after providing relevant information, verbal advice or making a referral.

Please read the policy [here](#) and then please get in touch via 0438637862 or info@indigenousartcode.org to discuss the issue.

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Who can raise a Complaint, Dispute or Concern with the IartC?

Anyone can. Whether you are an artist, consumer, general public, dealer or other related business you can raise a Complaint, Dispute or Concern in regard to a dealer of Aboriginal and Torres Strait Islander art.

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How do I raise a Complaint, Dispute or Concern with the IartC in regard to a dealer of Aboriginal and Torres Strait Islander art?

Please read the IartC Dealer Complaints, Disputes and Concerns Policy [here](#) and then get in touch with the IartC via 0438637862 or info@indigenousartcode.org to discuss the issue.



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What actions can the IartC take to address a Complaint, Dispute or Concern I have with a dealer of Aboriginal and Torres Strait Islander art?

The actions that can be taken depend on which category the issue falls under:

1. **Complaint:** a complaint relates to a serious and formal matter (see section 5.2 of the policy) raised with IartC against a Dealer Member and therefore covered under the Code.
2. **Dispute:** a dispute refers to a concern, a difference of opinion or argument raised with IartC related to:
 - a) a Dealer Member prior to a formal complaint being raised
 - b) a dealer, organisations or individual that are not IartC members and therefore fall outside the remit of the IartC, under normal circumstances.
3. **Concern:** a concern refers to matters that are not complaints nor disputes against a Dealer Member, though the complainant may be able to be assisted through IartC after providing relevant information, verbal advice or making a referral.

For more information on specific avenues available to resolve complaints, disputes or concerns please read the IartC Dealer Complaints, Disputes and Concerns Policy [here](#) and then please get in touch via 0438637862 or info@indigenousartcode.org to discuss the issue.



E: info@indigenousartcode.org
W: indigenousartcode.org

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Australian Government
Indigenous Visual Arts Industry Support

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