

# Indigenous Australian Art COMMERCIAL CODE OF CONDUCT

## Background

In June 2007, the Senate Standing Committee on Environment, Communications, Information Technology and the Arts released a report entitled 'Indigenous Art – Securing the Future'. This Senate Inquiry was undertaken in response to reports of unscrupulous conduct in the Indigenous visual arts industry, in particular reports of unfair treatment of Indigenous artists. The report's 29 recommendations were broad ranging, reflecting the sector's diversity and complexity. Central to those recommendations was the call for an industry Code of conduct to address unethical behaviour. One of the key recommendations of this report was the introduction of an Indigenous Australian Art Commercial Code of Conduct to be developed for a two-year, self-regulatory period. If problems remain after this period, the report recommended a mandatory Code be introduced. The Australian Government response, tabled on 8 August 2008, agreed to recommendations in relation to the introduction of a Code and called on Industry to complete the Code.

This Code has been developed taking into account the Senate Inquiry's recommendations and the Australian Government response to that report. After two years of operation, this Code will be reviewed to determine whether it is an effective tool in addressing unscrupulous and unethical behaviour in the Indigenous visual arts industry.

This Code aims to contribute to the wellbeing of Indigenous Australians more generally.

## The Code's operation

This Code aims to promote fair trade and practice in the Industry and provides a detailed list of the terms that should be incorporated into agreements that relate to the trade in Indigenous artwork. This Code also provides guidance for signatories on complaints handling and resolution of disputes that may arise under this Code.

Persons or entities operating in the Indigenous art industry (such as dealers, agents, art galleries, auction houses and art centres, wholesalers and retailers) may apply to the Code Administration Committee that administers this Code to become a signatory to this Code.

Signing up to this Code is voluntary, but in making that commitment signatories are agreeing to comply with provisions of this Code.

## Conflict with legislation

A range of existing legislation and regulations already apply to businesses and individuals operating in the Indigenous visual arts sector and will be relevant for Code signatories (an indicative list follows). Where there is any conflict or inconsistency between this Code and any Commonwealth, State or Territory legislation or regulation, that legislation or regulation shall prevail.

It is important to note that this Code does not seek to identify or deal with behaviour which is already illegal under existing law. Illegal behaviour or practices should be brought to the attention of the proper authorities.

### **Existing legislation\***

*A New Tax System (Goods and Services Tax) Act 1999 (Cth);*

*Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth);*

Anti-discrimination law including equal opportunity, racial vilification and disability discrimination;

*Commerce (Trade Descriptions) Act 1905 (Cth);*

*Copyright Act 1968 (Cth);*

*Copyright Amendment (Moral Rights) Act 2000 (Cth)*

*Crimes Act 1914 (Cth)*

*Designs Act 2003 (Cth);*

*Income Tax Assessment Act 1936 (Cth);*

*Income Tax Assessment Act 1997 (Cth);*

Occupational Health and Safety legislation;

Privacy legislation;

*Protection of Movable Cultural Heritage Act 1986 (Cth);*

*Taxation Administration Act 1953 (Cth);*

*Trade Marks Act 1995 (Cth);*

*Trade Practices Act 1974 (Cth);*

State and territory fair trading legislation; and

Legislation governing workplace harassment victimisation and bullying

\*This is an indicative list. You should seek independent advice about what your legal obligations are in the context of your business.

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# Part 1 Preliminary

## 1 Name of Code

This Code is the Indigenous Australian Art Commercial Code of Conduct.

## 2 Purpose of Code

The purpose of this Code is to regulate the conduct of dealers in the Indigenous art industry to ensure:

- fair and ethical trade with artists;
- transparency with the promotion and sale of artwork;
- a fair and equitable dispute resolution system for disputes arising under this Code.

## 3 Definitions

In this Code:

**agent** means a person or organisation who sells artwork for or on behalf of an artist in return for a commission or fee.

**artist** means an artist of Aboriginal and/or Torres Strait Islander descent, who identifies as Aboriginal and/or Torres Strait Islander, and is recognised as such by members of the community with which the artist identifies.

**artist's representative** means a person who is an authorised representative of the artist with authority to speak or act for the artist. This does not include an agent.

**artwork** means a work of art or craft produced by an artist, whether or not incorporated into another work of art or craft produced by that artist or another person, including but not limited to painting, drawing, artists' books, woodwork, ceramics, glass, jewellery, sculpture, fibre work, printmaking, photography, installation, video and multimedia.

**artwork agreement** means an oral or written agreement between a dealer and an artist for the supply or acquisition of artwork.

**bad debt** means any amount to be paid by a purchaser to the agent after the time it was required to be paid, for the artist's artwork where:

- a) the agent arranged for the purchaser to buy that artwork; and
- b) the purchaser has taken possession of the artwork.

**commission** means the percentage of the price of an artwork that the agent charges for services provided to the artist in the sale of an artwork by that artist.

**community** means the Aboriginal and/or Torres Strait Islander community with which the artist identifies.

**copyright** means the rights conferred by the *Copyright Act 1968* in respect of an artwork including the rights to reproduce, publish and communicate the artwork.

**dealer** means:

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

**Indigenous** means a person who is of Aboriginal and/or Torres Strait Islander descent who identifies as Aboriginal and/or Torres Strait Islander, and is recognised as such by members of the community with which the artist identifies.

**moral rights** means the rights as defined in the *Copyright Act 1968* and includes the right of attribution, the right of integrity and the right against false attribution.

**payment** includes any form of remuneration or royalty unless otherwise stated.

**provenance** means the history of ownership of an artwork.

**signatory** means a person or organisation who has received written confirmation from the Code Administration Committee that they are a signatory to this Code until such time as they have been removed as a signatory to this Code by the Code Administration Committee.

**Traditional Owners** means the local descent group of Aboriginal and/or Torres Strait Islanders who have common spiritual affiliations to a site on the land that place the group under a primary spiritual responsibility for that site and for the land.

## 4 Application

- 1 This Code is a voluntary Code that applies to a signatory to this Code.
- 2 To become a signatory to this Code a dealer must apply to become a signatory to the Code by paying any fee or charge required to be paid and providing written notice to the **Code Administration Committee** specifying:
  - a) the identity of the dealer including the dealer's name and contact details;
  - b) the dealer's wish to become a signatory to this Code and the dealer's commitment to uphold this Code;
  - c) if the dealer or any officer, employee, servant or agent of the dealer:
    - i) is currently under investigation or involved in proceedings by a public agency alleging a contravention or potential contravention of trade practices law or fair trading law;
    - ii) has been subject to judgment, had orders made or been convicted of an offence for a contravention of trade practices law or fair trading law; or
    - iii) has given an undertaking or assurance to a public agency in relation to a contravention or potential contravention of trade practices law or fair trading law;
    - iv) has been convicted of an offence, been declared bankrupt, insolvent or under administration; and
  - d) any other information sought by the Code Administration Committee.

- 3 A dealer becomes a signatory to this Code upon receipt of written confirmation from the Code Administration Committee that they complied with the requirements of clause 4(2) and they are a signatory to this Code.
- 4 The Code Administration Committee has the discretion to refuse a dealer's application to become a signatory to this Code on the grounds referred to in clause 4(2) or for any other reason related to good fame or character.
- 5 This Code applies to any artwork created by an artist, or dealing with an artist, on or after the day that the dealer becomes a signatory to this Code.
- 6 A dealer must notify the Code Administration Committee of any change to the matters referred to in clause 4(2) in so far as they relate to the dealer within 14 days of any such change.
- 7 A dealer will be deemed to have engaged in conduct in contravention of a provision of this Code if they were involved in conduct that gave rise to such a contravention by having:
  - a) aided, abetted, counselled or procured the contravention;
  - b) induced, whether by threats or promises or otherwise, the contravention;
  - c) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - d) conspired with others to affect the contravention.
- 8 The sanctions referred to in clause 19(3)(c) of this Code will not apply during the first 3 months of a dealer becoming a signatory to this Code. All other sanctions can be applied immediately upon a dealer becoming a signatory to this Code.

## **Part 2 Professional conduct**

### **Division 2.1 Dealings with artists**

#### **5 Unconscionable or unprofessional conduct**

- 1 A dealer must not engage in unconscionable conduct towards an artist or an artist's representative.
- 2 A dealer must act professionally. Unprofessional conduct for the purposes of this Code includes but is not in any way limited to the following types of conduct:
  - a) unfair or unreasonable conduct that goes against good conscience;
  - b) taking advantage of the artist or artist's representative, or exploiting the artist or artist's representative, who is under a disadvantage due to illness, ignorance, inexperience, impaired faculties, financial need, substance abuse, poor reading, writing or numeracy skills, lack of confidence in cross-cultural interactions, or other circumstance affecting the artist's ability to protect their own interests;
  - c) unfair, bullying and thuggish behaviour or an overwhelming case of unreasonable behaviour;

- d) exerting undue influence, duress, coercion or pressure or using unfair tactics when signing up an artist or during the on-going relationship with the artist;
- e) not acting in good faith, which could include acting capriciously, or promoting the dealer's interests to the detriment of the artist;
- f) not giving an artist an opportunity to understand any documentation, ask questions or obtain advice;
- g) allowing the artist or artist's representative to rely upon an incorrect assumption, including for example that the value of a non-cash payment is worth significantly more than its true market value;
- h) requiring the artist to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the dealer;
- i) refusing or not being willing to negotiate the terms and conditions of any agreement entered into with the artist or artist's representative;
- j) paying an artist for their artwork by providing the artist with drugs or illegal goods or services.

## **Division 2.2 Agreements with artists**

*Explanatory note: This Code does not require a written agreement between a dealer and an artist (unless requested by the artist). However, agreement must be reached between a dealer and an artist about the matters identified in clause 7 before any transaction takes place between the dealer and the artist. The dealer must then give an artist a written statement of these matters as evidence of what has been agreed.*

### **6 Before entering into an artwork agreement**

- 1 A dealer must not enter into an **artwork agreement** unless the requirements of clause 7 are met.
- 2 If an artist asks a dealer for the terms of an artwork agreement to be put in writing then a dealer must provide the artist with a written copy of the terms of the artwork agreement.

### **7 Minimum terms of artwork agreement**

All artwork agreements

- 1 Before a dealer enters into any artwork agreement with an artist for the purposes of this Code, a dealer must explain the nature, substance and key terms of the artwork agreement to the artist or artist's representative and what it means for the artist, including but not limited to the following matters to the extent applicable:
  - a) whether the dealer is acting as an agent or dealer in some other capacity;
  - b) whether the agreement is exclusive or non-exclusive;
  - c) term of the artwork agreement;
  - d) timeframes for finishing the artwork;

- e) delivery terms, including quantity of artwork required;
- f) payment terms, including method of payment and timeframes;
- g) any amounts to be deducted from the sale proceeds of the artwork, including but not limited to percentage of commissions, taxes or expenses;
- h) any insurance held by the dealer, and the nature of that insurance, in relation to an artist's artwork under their control;
- i) liability for any damage that may occur while the artwork is in the dealer's possession;
- j) the artist's rights of copyright in the artwork and the terms of any copyright licence;
- k) protocols for dealing with the artwork or reproducing the artwork;
- l) cooling-off period and terms;
- m) how the artwork agreement can be varied;
- n) how the artwork agreement can be terminated;
- o) whether the artwork agreement can be terminated if there has been no breach of the artwork agreement;
- p) the period of notice that must be given to vary or terminate the artwork agreement;
- q) the reporting period for the purposes of clauses 16 or 17;
- r) complaint handling.

#### Additional requirements for agents

- 2 Where a dealer will be acting as an agent under the artwork agreement, then before the dealer enters into the artwork agreement with an artist for the purposes of this Code, the dealer must explain the nature, substance and key terms of the artwork agreement to the artist or artist's representative and what it means for the artist, including but not limited to the matters referred to in clause 7(1) and:
  - a) whether the agreement is for full or part representation;
  - b) the services to be provided by the agent;
  - c) the artist's rights for approval of any contracts or other arrangements that may be negotiated by the agent on the artist's behalf;
  - d) right of ownership of artwork until the artwork is sold, including the artist's rights if any to repossess the artwork;
  - e) arrangements in relation to the Intellectual Property Rights relating to the artwork covered by the agreement, including any licence in copyright in the artwork;
  - f) payment of commissions, including any commission payable in respect of the award of prizes;
  - g) pricing and commissions if any relating to donations;

- h) the documentation and reporting to the artists on promotional activities to be undertaken by the agent on the artist's behalf;
- i) delegation of the agent's obligations.

#### Additional requirements for installations and exhibitions

- 3 Where artwork under the artwork agreement is to appear in an exhibition, and before the dealer enters into the artwork agreement with an artist for the purposes of this Code, the dealer must explain the nature, substance and key terms of the artwork agreement to the artist or artist's representative and what it means for the artist, including but not limited to the matters referred to in clause 7(1), and if applicable in clause 7(2), and:
- a) in so far as the agreement relates to any installations of the artwork in an art centre or public gallery or other gallery or other public space:
    - i) a timeline including:
      - a. due dates for artwork, material for catalogue, and publicity;
      - b. hours to be invested by the artist to create the artwork (if relevant);
      - c. payment schedule for payments to be made to the artist;
      - d. date of the exhibition opening;
      - e. duration of the exhibition;
      - f. promotional activities and requirements;
      - g. for time defined artworks, the duration, frequency, timing and public notification of that timing for audio visual performance;
    - ii) a condition report of the exhibition space before installation;
    - iii) that the cost of any repairs to the venue after removal of the installation is to be borne by the dealer.
  - b) responsibility for the installation, removal and disposal of an artwork that will be included in an exhibition;
  - c) how the artist, artist's agent and/or artist's art centre will be attributed and acknowledged in labelling, catalogues, and other supporting material.

#### Provide artwork proposal

- 4 Before a dealer enters into any artwork agreement with an artist for the purposes of this Code, a dealer must:
- a) provide the artist or artist's representative with a written statement that reflects the matters referred to in clause 7 and meets any requirements specified by the Code Administration Committee (referred to as the **artwork proposal**).
  - b) provide the artist or artist's representative with a copy of this Code when they provide the artist with the artwork proposal.

#### Assist artist to understand

- 5 Before a dealer enters into any artwork agreement with an artist for the purposes of this Code, a dealer must:
  - a) take reasonable steps to assist the artist or artist's representative to understand the nature and terms of the artwork agreement and the artwork proposal, such as but not limited to using a translator if required;
  - b) inform the artist or artist's representative that the artist has an opportunity to read and obtain advice about any written artwork agreement, artwork proposal or other documentation relating to the artwork agreement and provide the artist or artist's representative with that opportunity;
  - c) provide an artist or artist's representative with an opportunity to negotiate the terms of the artwork agreement.

## **8 Cooling-off period**

- 1 An artist or artist's representative may terminate an artwork agreement within:
  - a) 14 days of entering into the artwork agreement; or
  - b) such longer period as is agreed between the parties to the artwork agreement and specified in the artwork agreement ('the cooling-off period').
- 2 The effects of termination during the cooling-off period must be specified in the artwork proposal referred to in clause 7(4), including but not limited to the artwork and any payment made to the artist.
- 3 A dealer must not require the artist to pay any fees, charges, penalties, compensation or other costs as a result of the artist exercising their cooling off rights under this Code.
- 4 Before a dealer enters into any artwork agreement for the purposes of this Code, the dealer must inform the artist or artist's representative of their cooling-off rights under this Code and ensure that the artwork proposal referred to in clause 7(4) clearly sets out the artist's cooling-off rights.

## **9 Payment for artists**

- 1 Prior to or upon delivery of the artwork to the dealer from the artist or the artist's representative, or within a timeframe agreed between the artist or artist's representative and the dealer, a dealer must agree upon the following matters that relate to the artist's payment, which must be consistent with the other provisions of this Code:
  - a) the amount of the payment to the artist;
  - b) the amount of the dealer's commission, if the dealer is acting as an agent;
  - c) the means by which the artist will be paid;
  - d) if the payment to the artist is to be provided in a form other than cash then a reasonable market value of the non-cash payment must be stated in writing, and any encumbrances over the non-cash payment must be disclosed in writing, before the non-cash payment is made to the artist;

- e) whether payment will be determined by the quantity or quality of the artwork, and if so, how the payment is to be determined;
  - f) whether the cost of any goods and services (e.g. canvas, paint, paintbrushes, framing, etc) are to be deducted from the payment to the artist;
  - g) when the artist will be paid and whether there are any factors known to the dealer, or ought to have been known to the dealer, that could affect when the artist will be paid.
- 2 If the artist (or artist's representative) and the dealer cannot reach agreement upon any or all of the matters referred to in clause 9(1) the dealer must return the artwork to the artists at no cost to the artist if the artist or artist's representative asks the dealer to return the artwork to the artist.
- 3 If the dealer is acting as an agent, the dealer must ensure that the artist receives payment to which the artist is entitled to under an agreement in respect to the proceeds from the sale of artwork no later than 30 days after those proceeds were received by the dealer unless a longer time period for payment has been agreed for the purposes of clause 7 of this Code.
- 4 A dealer, who is not an agent, must pay the artist for artwork delivered under the agreement no later than 30 days after the dealer takes possession of the artwork unless a longer time period for payment has been agreed for the purposes of clause 7 of this Code.

## **10 Agent's liability for bad debt**

The agent is liable to the artist for any *bad debt*.

## **11 Inconsistency**

If a term of an artwork agreement conflicts with this Code then this Code prevails.

## **Division 2.3 Dealings with artwork**

### **12 Misleading or deceptive conduct**

- 1 A dealer must not make false or misleading representations or engage in misleading or deceptive conduct, or conduct that is likely to mislead or deceive.
- 2 For the purposes of clause 12(1), a dealer must not make a representation about any of the following matters, unless they had reasonable grounds for making the representation at the time the representation was made:
- a) the authenticity or provenance of an artwork;
  - b) any sponsorship, approval or affiliation (including an artist's affiliation with a dealer or an art centre) of an artist;
  - c) the place of origin of the artwork;
  - d) that an artwork has been produced by an Indigenous artist or artists;

- e) the artwork's exhibition history, reference notes, authenticity statements or price.

### 13 Code Certificate

*Explanatory note: the purpose of this clause is to ensure the integrity of statements about authenticity by requiring the dealer who transacts directly with the artist for the supply or acquisition of the artwork ('the First Dealer') to supply a **code certificate** with the artwork when they sell the artwork (with some exceptions as listed below). Any other dealer can only supply a **code certificate** if it is a code certificate created by the First Dealer and meets the requirements of this section.*

#### **The First Dealer**

- 1 The First Dealer is a dealer who:
  - a) purchases artwork directly from an artist; or
  - b) is an agent for the artist.
- 2 The First Dealer may only supply that artwork to another dealer or person if it is accompanied by a **code certificate** at the time of supply.
- 3 A **code certificate** must:
  - a) state that it is an '*Indigenous Australian Art Commercial Code of Conduct Certificate*';
  - b) name the artist or artists who created the artwork;
  - c) identify where and when the artwork was created;
  - d) provide a description of the size and medium of the artwork and any other characteristics necessary to identify the artwork;
  - e) provide the name, location and contact details of the person or association that is identifying the work;
  - f) include an authorising signature from a person representing the person or association that is identifying the work;
  - g) name the First Dealer and state that they are a signatory to the code.
- 4 A **code certificate** is not required to accompany an artwork for the purposes of clause 13(2) if:
  - a) that artwork is sold by the dealer for less than \$250 or any other amount specified by the Code Administration Committee; or
  - b) the artist or artist's representative informs the dealer that they do not want a **code certificate** to be created for that artwork and the dealer obtains evidence from the artist to this effect.

#### **Subsequent dealers**

- 5 If a dealer:
  - a) did not purchase the artwork directly from an artist; and
  - b) is not an agent for the artist;

then that dealer can only supply or display a **code certificate** if it is a code certificate that was created by the First Dealer and meets the requirements of clause 13(3).

## 14 Respect for Indigenous cultural practices and artist's rights

- 1 A dealer must respect Indigenous cultural practices by:
  - a) using their best endeavours to identify and adhere to applicable Indigenous cultural practices;
  - b) obtaining the consent of the artist before causing the artwork to be reproduced;
  - c) correctly attributing the artist or artists in accordance with the artist's Moral Right of Attribution;
  - d) taking steps to ensure that an image that is displayed on the internet or elsewhere does not infringe an artist's copyright, including an artist's Moral Right of Integrity;
  - e) advising a potential purchaser or seller of culturally sensitive artwork regarding the nature of the artwork, possible ethical means of ownership transfer including consulting, and acting in accordance with the wishes of the current traditional owners.
  - f) obtaining permission from the artist's family, community or estate for the use of names and images of deceased artists;
  - g) not using the name or image of an artist if the artist becomes deceased unless the dealer has used their best endeavours to obtain permission from:
    - i) that artist to use their name or image if they became deceased; or
    - ii) the artist's family or community to use the artist's name or image;
  - h) not marketing, promoting, displaying or selling secret/sacred and/or restricted artwork or material (such as Tjuringas or human remains). **Secret/sacred** artwork or material means artwork or material that contains information which is considered to be secret or sacred by the community to which it pertains.

## 15 Care of artworks

- 1 While an artist's artwork is in the possession or control of a dealer, that dealer must take reasonable precautions and exercise all reasonable care in the handling and storage of artwork to ensure the artwork is not damaged, destroyed or stolen.
- 2 A dealer must use clear labelling and packaging to correctly identify the artist or artists who created the artwork.
- 3 A dealer must obtain written approval from a person or other entity before using that person's or entity's logo.
- 4 A dealer must obtain written approval from an Indigenous organisation or group before using the name or logo of that Indigenous organisation or group.

- 5 If an artwork is damaged whilst in the possession or control of a dealer, that dealer is to consult the artist in the first instance and give the artist first option to repair the artwork at the dealer's cost or approve a qualified conservator to repair the artwork or to deal with the artwork in another way at no cost to the artist.

## **Division 2.4 Record keeping and reporting**

### **16 Agent must provide a statement to artist**

- 1 An agent who has entered into an artwork agreement with an artist or artist's representative for the purposes of this Code must give the artist or artist's representative a written statement within the reporting period referred to in the artwork proposal (***agent's report***)
- 2 The reporting period can be no longer than 6 months from the commencement of the artwork agreement.
- 3 The agent's report must specify the artist's artwork received by the agent during the reporting period including:
  - a) the date or dates of the sale of the artwork by the agent;
  - b) the type and quantity of the artwork sold;
  - c) the price received for the artwork sold;
  - d) details of each amount deducted by the agent from the sale price of the artwork;
  - e) the time and date at which the artwork was delivered to the agent;
  - f) details of any amounts of the artwork received by the agent during the period and not sold by the agent during that period;
  - g) if artwork that is delivered to the agent during the period is not sold by the end of the period, the steps taken by the agent towards selling the artwork.
- 4 An agent must give the artist an up-to-date agent's report within 14 days of the artist requesting an agent's report.
- 5 For the purposes of clause 16, an agent does not have to provide the artist with an agent's report more than once every 30 days.

### **17 Dealers (other than agents) must provide a statement to artist**

- 1 A dealer who is not an agent and has entered into an artwork agreement with an artist or artist's representative for the purposes of this Code must give the artist or artist's representative a written statement within the reporting period referred to in the agreement (***dealer's report***).
- 2 The reporting period can be no longer than 6 months from the commencement of the artwork agreement.
- 3 The dealer's report must specify the artist's artwork received by the dealer during the reporting period including:

- a) the quantity and nature of the artwork purchased by the dealer;
  - b) the date or dates of the purchases;
  - c) the price the dealer paid the artist for the artwork;
  - d) the price the dealer was paid when the dealer sold the artwork.
- 4 A dealer must give the artist an up-to-date dealer's report within 14 days of the artist requesting a dealer's report.
  - 5 For the purposes of clause 17, a dealer does not have to provide the artist with a dealer's report more than once every 30 days.

## Part 3 Code administration

### 18 Code Administration Committee

- 1 There will be a Code Administration Committee (**the committee**) to administer this Code.
- 2 The role of the committee is to:
  - a) implement and oversee the application of this Code;
  - b) maintain a register of signatories to this Code (**Code register**);
  - c) deal with issues relating to compliance and sanctions for non-compliance of signatories to this Code;
  - d) report on the operation and effectiveness of this Code in achieving its objectives.
- 3 The committee will be comprised of an odd number of representatives of the Indigenous visual arts industry and each member of the committee will have equal voting rights regarding any decisions made by the committee.

### 19 Sanctions

- 1 In the event that the committee becomes aware that a signatory may have breached the requirements of this Code, the committee may:
  - a) require a signatory to substantiate any claims or representations they make in so far as those claims and representations may be relevant to the requirements of this Code;
  - b) give written notice to a signatory that the committee is concerned that the signatory may have:
    - i) failed to comply with their obligations under this Code;
    - ii) ignored a direction of the committee to remedy non-compliance, or failed to do so within a reasonable time;
    - iii) failed to comply with an undertaking given to the committee.
- 2 The notice provided to the signatory must state the period within which the signatory has to respond to the notice of the committee.
- 3 Following the receipt of a response from the signatory, or in the event that a response is not received, the committee may:

- a) advise the signatory in writing that they need to take further steps to ensure compliance with the Code and report back on those measures to the committee;
- b) conduct a review, or require an internal or external review to be conducted, for the purposes of providing the committee with supportable verification as to the extent to which the dealer is complying with the Code;
- c) following the review, publish the name of the signatory and the details of the breach on the committee website; and/or remove the signatory from the Code register.

## **20 Complaints Handling System**

- 1 Signatories to this Code will:
  - a) commit to the efficient and fair resolution of complaints by developing detailed procedures for complaint handling within their operations;
  - b) adopt these complaint handling procedures as a clear message of their commitment to efficient and fair resolution of complaints;
  - c) publish the complaints handling procedures where they can be readily seen and accessed by staff, artists, artist's representatives, other dealers and other interested parties;
  - d) nominate and appoint a Complaints Coordinator whose responsibility will include ensuring complaints are handled efficiently and effectively;
  - e) document and keep records of the steps taken to adopt the complaints handling procedures.
- 2 The duties of the Complaints Coordinator will be to:
  - a) ensure that complainants are promptly provided with a copy of the signatory's complaints handling procedures upon request;
  - b) ensure that all relevant staff and representatives are given all necessary information, training and guidance on how to properly receive and refer a complaint to the Complaints Coordinator;
  - c) assist any person who wishes to make a complaint to do this;
  - d) receive and promptly investigate complaints (while keeping appropriate records);
  - e) respond to the complainant in writing within 7 calendar days of the complaint being received. If it is not possible to provide a final response within this timeframe, a preliminary response should be provided. This should advise that the complaint has been received, and provide some detail as to the steps that will be taken to investigate the complaint. If possible, a timeframe as to the completion of the investigation should also be provided to the complainant;
  - f) keep a summary of the complaints received (e.g. the name of the person who made the complaint, subject of the complaint, nature of the complaint, outcome of the matter);

- g) review the overall operation of the complaints system on a regular basis and make improvements where necessary.

## **21 Dispute Resolution**

- 1 In the event that no agreement to resolve a complaint or dispute can be reached between the parties, the complaint may be referred to a mediator recommended by the committee, if this is agreed to by both parties to the dispute.
- 2 The cost of the mediation will be borne equally by the parties to the mediation unless otherwise directed by the committee and all issues relating to costs and payment for the mediation will be agreed upon prior to the commencement of the mediation process. The committee may take into account financial hardship or other factors when making a direction as to the costs of mediation.
- 3 The appointed mediator will determine the procedures and requirements of the mediation session.
- 4 The mediator is to provide a report to the committee on the outcome of the mediation within 21 calendar days of the mediation.