

# AUSTRALIAN INDIGENOUS ART COMMERCIAL CODE OF CONDUCT

## BACKGROUND

### **What is in this draft code of conduct?**

The code sets out minimum standards for ethical Indigenous visual arts commerce to improve the transparency of transactions across the sector, aiming to ensure that:

- the conditions artists work under are ethical;
- full and fair payment is made to artists;
- consumers have a means to check authenticity; and
- works can be tracked from artist to buyer.

The draft code specifies proper conduct for people and organisations operating in the roles of dealer (person or organisation that purchases work for resale), agent (person or organisation that sells artwork for or on behalf of an artist in return for a commission or a fee), and artist (person of Aboriginal or Torres Strait Islander descent). In particular, the draft code attempts to clearly define terms of trade and rights and responsibilities in relation to sale and management of artworks.

### **Why is a code of conduct required?**

On 20 June 2007 the Senate Standing Committee on Environment, Communications, Information Technology and Arts tabled its report *Indigenous art: securing the future*. This Inquiry was triggered by allegations of unethical and unscrupulous behaviour in Australia's Indigenous visual arts industry, in particular the reported mistreatment of Indigenous artists.

The report's 29 recommendations were broad ranging, reflecting the sector's diversity and complexity. The report included a suite of key recommendations calling for the introduction of an Indigenous Art Commercial Code of Conduct. The Australian Government's response to the Inquiry report was tabled on 8 August 2008. That response agreed to the importance of introducing a code and called on the industry to finalise a code as soon as possible.

- A code establishes a number of minimum standards, agreed by industry, setting out appropriate and ethical commercial conduct in the Indigenous visual arts sector.
- This is consistent with Australian Competition and Consumer Commission best-practice for the development and application of voluntary codes of conduct.

### **What does the code of conduct aim to achieve?**

This draft code seeks to achieve effective application of minimum standards around core transactions between artists, agents and dealers. The overall aim is to promote ethical commerce to improve the transparency of those transactions across the Indigenous visual arts sector. In turn, this will also raise consumer awareness and

expectations around minimum standards which is an important tool in isolating and identifying what is *not* acceptable conduct.

The Indigenous visual arts sector is very diverse and includes: individual artists and their communities and representative bodies, commercial and public galleries, art centres in urban, regional and remote Australia, auction houses and consumers and collectors. As such, the draft code does *not* attempt to capture every aspect of the very broad range of issues impacting on this sector nor does it prescribe principles or behaviours to which signatories to the code must adhere beyond the core set of transactions between artist, agent and dealer. This code does not therefore include, for example, preferred governance arrangements for art centres nor does it set out how artists should collaborate on individual works.

*Submitters are strongly encouraged to provide comment on how a code can support the minimum standards described above.*

### **How will the code of conduct operate?**

Once operational, industry participants will be able to sign up to the code by providing a written notice to the Code Administration Committee. A template notice will be available online. A register of signatories will also be available online and consumers will therefore be able to check whether the agent or dealer from whom they are buying their artwork is a code signatory.

Although registration to the code is voluntary, signatories are bound by the code rules once they have signed on. If the Code Administration Code decides, in considering a complaint, that a signatory has breached the Code, the signatory will be advised in writing and be asked to rectify the breach. If the breach is not rectified, the appropriate sanction will apply. This could include removal from the register.

The Code Administration Code will be composed of industry representatives and supported by a secretariat which may also see to the day to day administration of the Code, including, for example, receipt of applications to be a signatory to the code.

### **How will the code of conduct be reviewed?**

The Senate Inquiry report recommended that once operational, a voluntary code would operate for a two year period. After that period, if problems remain, then a move to a prescribed code under the *Trade Practices Act 1974* (the Act) enforced by the ACCC could be considered by Government. The ACCC would have an enforcement role under the Act and this is why the draft code has been developed in line with ACCC best practice principles for voluntary codes. In addition, this makes it easier and more practical to assess whether the code's operation is effective against an objective measure.

This does not mean, however, that in two years time that the code will become mandatory. It is more likely that, after a two year period, the Code Administration Committee which oversees the operation of the code will put advice to Government about the code's efficacy. This advice will inform consideration of what action should be taken to ensure continued ethical practice in the Indigenous visual arts sector.