

# Best Practice for Artists and Publicly Funded Galleries

## SECTION A: MAPPING THE SECTOR

### SECTION A.1 INTRODUCTION

#### A.1.1 Overview

*Best Practice for Artists and Publicly Funded Galleries* is a joint initiative of the National Association for the Visual Arts (NAVA) and Museums Australia, funded by the Gordon Darling Foundation. The consultant undertaking the project is Virginia Hollister.

The aims of the project are:

- for artists - to provide a comprehensive picture of the not for profit publicly funded galleries section of the industry and the relationship parameters that may be offered, assisting artists to negotiate fair returns and conditions within the marketplace
- for galleries: to provide not for profit publicly funded galleries and their governing bodies with benchmarks for acceptable practice in their dealings with living Australian professional artists.

For this project, the term “publicly funded galleries” includes: state and national galleries and museums/galleries of contemporary art, regional galleries and regional art centres (not Indigenous Art Centres), members of the Australian Craft and Design Centres (ACDC), and members of the Contemporary Art Spaces (CAOs).

The documents are divided into the following sections:

Section A – Mapping the sector

- A.1 Introduction
- A.2 Types of publicly funded galleries
- A.3 Types of exhibitions in publicly funded galleries.

Section B – Proposed Codes and explanatory texts

- B.1 Key terms
- B.2 Best practice for exhibitions in publicly funded galleries
- B.3 Best practice for selling art and craft in publicly funded galleries
- B.4 Code of Ethics for publicly funded galleries.

#### A.1.2 Industry relevance of the project

The draft best practice guidelines for exhibiting and selling in Publicly Funded Galleries (Section B) will be used to develop the next edition of the NAVA *Code of Practice for the Australian Visual Arts and Craft Sector* and as such will influence the expectations of artists and arts administrators in the future. Your feedback on these, and the issues arising, is particularly important.

#### A.1.3 Context

Most artists and craft practitioners, at some stage in their exhibiting career, will show work in a not for profit gallery that derives its primary funding from federal, state or local government sources, or a mix of these. These galleries as a group are the focus of this report, and are referred to as Publicly Funded Galleries (PFG).

The purpose of this report is to investigate the nature of the relationship between artists and craft practitioners and publicly funded galleries in order to:

- articulate the various sectors of the PFGs
- articulate the many different types of exhibitions and sales opportunities that take place in

- these venues
- explore what best practice might be for the payment of artist fees in PFG for different types of exhibitions
- identify best practice for other kinds of services provided by artists and craft practitioners (screenings, performances, lecturers, workshops, supplying retail goods for gallery shops etc)
- strengthen conflict of interest guidelines to guide artists, craft practitioners, venue staff and their Boards regarding circumstances to be avoided or managed appropriately
- identify conflict of interest issues between PFGs and the commercial sector including unfair commercial competition.

The resulting best practice recommendations will be for Australian artists and craft practitioners and Australian PFG and should be viewed as minimum standards.

In the relationships between overseas artists and Australian PFG it would be hoped that these best practice principles would also be applied.

It should also be noted that the recommendations in this report are not aimed at the relationship between Indigenous artists and the art and craft centres that support the creation, marketing and promotion of some Indigenous art. Likewise a PFG covered under this project will need to be mindful of protocol for the display, handling and sale of work by Indigenous artists that fall outside of the scope of this project, but which have been outlined in the *Indigenous Australian Art Commercial Code of Conduct*<sup>1</sup> and *Continuous Culture, Ongoing Responsibilities*.<sup>2</sup>

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<sup>1</sup> A joint project of NAVA / Desart / ANKAAA, 2007.

<sup>2</sup> Museums Australia, 2003.

# Best Practice for Artists and Publicly Funded Galleries

## SECTION A.2 TYPES OF PUBLICLY FUNDED GALLERIES

Publicly funded galleries have proliferated in Australia since the 1980's and now include four major sectors:

- National and State Galleries including Modern and Contemporary Art Museums
- Regional Galleries throughout Australia
- Contemporary Art Organisations (CAOs)
- Australian Craft and Design Centres (ACDCs)

The defining characteristic of all of the above is that they are not for profit entities and they receive the majority of their funding for administrative and operational purposes from one or more levels of government: federal, state and local.

They are an extremely diverse range of organisations with different histories and roles in relation to the collection, conservation, presentation, critical analysis, promotion and marketing of contemporary visual art and craft.

The following briefly describes each of the sectors, noting at the end other galleries operating in the public sphere.

It should be noted that most publicly funded galleries also have a retail function, either through a museum or gallery shop or through selling works of art and craft from exhibitions. Issues around selling are discussed in Best Practice for Selling Art and Craft in Publicly Funded Galleries.

*If you can assist in developing these descriptions, please do so. Your input is welcome.*

### A.2.1 National Galleries

The National Gallery of Australia in Canberra, founded in 1975, holds a national and international collection of visual art and craft. As well as developing and displaying its permanent collection, it initiates and tours exhibitions to all parts of Australia. Its stated aim is to be the pre-eminent gallery in Australia through the quality of its collection and the service it provides to the Australian people. The gallery may exhibit the work of senior or significant living Australian artists and craft practitioners, either as a focus exhibition or in the context of a larger curated thematic presentation.

The National Portrait Gallery at Old Parliament House and Commonwealth Place was founded in 1998. It is creating a collection of portraits across diverse media. It exhibits both temporary exhibitions of contemporary material and a permanent collection of portraits of nationally significant Australian individuals. It also commissions artists to paint portraits.

Several other national institutions display the work of living Australian artists and craft practitioners from time to time in relation to other items in their permanent collections. These include the National Library, the Australian National Museum, the National Botanical Garden, the National Film and Sound Archive, and the Australian War Memorial.

The federal government funds all of these national institutions with additional assistance from private sponsors and benefactors. The collections they have built are intended to be a national archive and to provide an overview of the Australian experience.

### A.2.2 State Galleries, and Galleries/Museums of Modern or Contemporary Art

Each State and Territory has a major visual arts institution. All receive substantial administrative and

operational funding from state government with additional project based funding from federal government sources. The average staffing level of a state gallery is 126.5 full time staff. Benefactors and sponsors provide the majority of funds and/or items for collection development. Most of the institutions in the southern states were created during the 19<sup>th</sup> century as each separate colony of Britain strove to acquaint Australians with European artistic traditions as well as to collect material reflecting their own unique achievements. These galleries house and exhibit large permanent collections to which contemporary material is added as deemed appropriate.

The state galleries began showing temporary exhibitions of loaned work by living Australian visual artists and/or craft practitioners only in the 1980's. Their interest in contemporary material has increased steadily since then and, within the last 5 years, has resulted in Victoria and Queensland establishing a separate museum/gallery of contemporary or modern art as a branch of the state gallery. New South Wales has a major museum of contemporary art established with funds from a benefactor of the University of Sydney and sited in a major public building. All of the state gallery institutions are developing permanent collections of the work of contemporary Australian visual artists, and a few of the work of Australian craft practitioners.

Today, these institutions play a leading role in the exhibition of contemporary work at a national, state and regional level. All of these galleries host, and some initiate, major exhibitions of international visual art or craft that include an Australian component. Many tour exhibitions to other states and/or regional centres. The state gallery institutions also provide substantial related services to the public including lecture series, forums, seminars, education programs, performances, libraries, gallery shops and cafes, and membership/friends activities.

The State and the Northern Territory libraries and museums may from time to time hold exhibitions of the work of living artists and/or craft practitioners, or include their work in exhibitions to support a broader theme.

### **A.2.3 Regional Galleries and Art Centres**

There is a network of more than one hundred regional art galleries or art centres in Australia, varying considerably in size and scope. Reflecting the spread of the national population, in New South Wales there are 33 regional galleries, in Victoria 24, in Queensland 31, in South Australia 9, in Western Australia 5, in Tasmania 4, in the ACT 2, and in the Northern Territory 1.

The average staffing level of a regional gallery is just 2.1 full time staff, and in some regional galleries, the staff are volunteers. When compared to the state and national institutions, many in this sector prefer to be referred to as 'small public galleries' given that the scope of their services to artists and the community is limited by their smaller size and funding base.

All receive the majority of their funding from local government. Some receive additional funding for projects from federal and/or state government sources, and from sponsors or benefactors. A few were established in the late 19<sup>th</sup> century and have valuable permanent collections. However the majority were established in the mid to late 20<sup>th</sup> century as local government accepted a greater degree of responsibility for the provision of cultural services, and have small collections.

All play a role in the support of regional practice and in introducing the public to, and engaging them with, contemporary visual art and craft. Exhibitions range from the work of established and mid-career artists and craft practitioners to the work of emerging practitioners and students still in training. Many regional galleries also host unselected community access exhibitions; competitions, prizes and awards; and fundraising exhibitions.

Local government supported libraries and other exhibition spaces may also provide display space to visual artists and craft practitioners. See below.

### **A.2.4 Contemporary Art Organisations (CAOs)**

These organisations arose in the 1970's and 80's as artist run initiatives in response to an unmet need for exhibition space for experimental, ephemeral, new media and cross art form practices. At the time of their establishment this type of work was not being exhibited within the state institutions and the regional gallery network, and had limited exposure via the commercial gallery sector. Now the

CAOs are relatively well established and well funded from a mix of state and federal government sources, sponsors and benefactors.

There is currently a network of twelve contemporary art organisations with representation in each state and territory. All except the Australian Network for Art and Technology provide an exhibition venue for a diverse range of contemporary visual arts practices by both established and emerging Australian and international artists; the Australian Network for Art and Technology supports virtual exhibitions via the internet. The Australian Centre for Photography and the Centre for Contemporary Photography focus specifically on photographic media. Several of the CAOs have associated residency studios, some include performance space and screenings, and some publish media based journals. All aim to provide a critical context for contemporary visual art practice through activities such as forums, seminars and publication.

Some CAOs include exhibition space for hire. The CAOs are not collecting institutions.

### **A.2.5 Australian Craft and Design Centres**

There are currently ten contemporary craft and design organisations in Australia, with one or more centre in each state. Objectspace in New Zealand is an eleventh member. Craft Australia is a national body that plays a strategic direction and advocacy role and assists with international projects, whilst the other organisations are generally state focused.

These centres developed out of the state and territory craft councils founded in the mid 20<sup>th</sup> century, and have embraced design as it relates to the construction, conception and production of contemporary craft objects. The organisations are funded from a mix of state and federal government sources, sponsors and benefactors. All centres advocate for the interests of their state's craft practitioners.

Most of the state based centres provide an exhibition and selling platform for craft practitioners and designers. As some 75% of craft practitioners are not represented by a commercial gallery, the ACDC network has, to some extent, stepped into the breach to represent and market their work.

Some of the centres offer residency opportunities, advanced training, a commissioning service, and one publishes a journal. The ACDCs are not collecting institutions with the exception of the Design Centre - Tasmania that houses the Tasmanian Wood Design Collection.

## **OTHER EXHIBITING VENUES THAT MAY RECEIVE PUBLIC FUNDING**

### **A.2.6 Artist Run Initiatives (ARIs)**

In all States and Territories, in capital cities and regional areas, artists and craft practitioners have cooperatively set up spaces to exhibit and sell their work. There are approximately 85 of these nationally. Most are operated by groups of volunteer artists and craft practitioners, although there are some cases of paid part-time staff. Most ARIs are self funding. Some ARI's have attracted limited state or federal funding for specific projects or aspects of their operation.

Some of these spaces have associated studios and other facilities for the production and presentation of work. Their exhibitions programs may be determined through a peer review process or through an open access policy. Artists and craft practitioners generally pay a fee to rent the exhibition space, with variable fees charged dependent on the level of services provided by the venue. Exhibitors meet the majority of presentation costs.

### **A.2.7 University Galleries**

Many universities in Australia have one or more art galleries on campus, funded by the University or with assistance from a benefactor. The scope of their operation depends on their level of funding and staffing. Most are closely associated with teaching departments in fine arts or visual art/craft and others have been established to complement a broader cultural and educational agenda. They exhibit a wide spectrum of work from the historical to the contemporary, from overseas and from Australia. Where the curriculum of the

university includes visual art and craft, these galleries also display the work of graduating students, and of past and current staff.

A small number of the university galleries have been extremely well endowed through benefactors and some have substantial permanent collections. Many of these galleries are collecting institutions.

### **A.2.8 Local Government Gallery Spaces not in the Regional Gallery Network**

A number of gallery spaces supported by local government offer exhibition opportunities for artists and craft practitioners. These tend to be associated with libraries or community leisure centres/workshops. Generally these spaces are available for hire or offered with minimal or no support to the exhibitor.

### **A.2.9 Art and Craft Centres**

There is a network of 106 art and craft centres in Australia that exhibit the work of Indigenous artists. These are spread throughout the six states and the Northern Territory. They are community owned enterprises; many receive federal funding via the communities in which they operate. They perform a variety of roles including some or all of the following: promotion, marketing and sale of visual art and craft; education and training of artists and craft practitioners; provision of art materials, accommodation and studio space; and documentation of work. More than 5,000 Indigenous artists are represented by art and craft centres.

### **A.2.10 Artist and Craft Practitioner Associations, Organisations, Unions**

There are many membership organisations throughout Australia that represent the interests of artists and/or craft practitioners and assist in establishing standards of professional practice. These include local and state based groups as well as national bodies with a significant advocacy role. Some receive a mix of state and federal funding and/or sponsorship for specific activities. Many publish newsletters, and a few broker employment opportunities for artists. A small number of these organisations also have exhibition venues available for hire.

# Best Practice for Artists and Publicly Funded Galleries

## SECTION A.3

### TYPES OF EXHIBITIONS IN PUBLICLY FUNDED GALLERIES

There are many different types of exhibitions that a not for profit publicly funded gallery might initiate or host. The following briefly describes these, including whether and by what mechanism work might be selected for display; whether current practice is to pay artist fees or not; and whether work might be sold from the exhibition.

If you can assist in developing these descriptions, please do so. Your input is welcome.

#### A.3.1 Curated Exhibition

*Definition for this project: An exhibition organised by the gallery, or on loan from another gallery, or organised by a freelance curator, that explores a specific theme or practice and involves the display of work by one or more artists or craft practitioners.*

A curator or team of curators, or an individual or group empowered to judge the merit of the work, always selects the work. The work is usually already in existence, or artists/craft practitioners may be invited to create work for selection into the exhibition. Curated exhibitions may be toured by the originating gallery to one or more other galleries.

All four sectors of the publicly funded galleries curate exhibitions. These may be an:

- international, national or local survey show of contemporary work
- exhibition based on a specific genre or practice
- exhibition of a particular artist's or craft practitioner's work.

Work in a curated exhibition may or may not be for sale by the gallery.

Artists and craft practitioners are normally paid a loan fee for the use of their work in the exhibition, as well as other fees for associated services such as artist talks, workshops, screenings, specific promotional appearances, interstate travel costs, etc.

#### A.3.2 Commissioned Exhibition

*Definition for this project: An exhibition similar to curated exhibitions, except that in these exhibitions, the originating gallery commissions some or all of the work to be created by the artist/s or craft practitioner/s specifically for the exhibition, and meets much of the cost burden of doing so.*

This is particularly true of new media and installation work or particularly large and ambitious pieces.

All four sectors of the publicly funded galleries may commission exhibitions, but these are much more likely to be found in the larger galleries with sufficient budgets to meet the additional costs involved.

Work/s are not usually for sale. Depending on the type and scale of the work commissioned, the exhibition may be toured by the originating gallery to one or more other galleries.

Artists and craft practitioners are normally paid a fee that includes remuneration for materials, labour, freight and installation as well as associated fees as above.

### **A.3.3 Exhibition of Student, or Emerging Artist's, or Emerging Craft Practitioner's Work**

State galleries, regional galleries, contemporary art organisations and centres for craft and design all mount or host exhibitions of the work of graduating students, or of student work addressing a particular theme, as well as the work of emerging artists and craft practitioners – usually defined as recent graduates within the first five years of their practice, or below a particular age cut off point.

These exhibitions may be curated to display the most talented of a new cohort of artists or craft practitioners. However in some cases the gallery merely provides a venue for an exhibition of work that has been selected by teachers, or by another individual or group empowered to judge the merit of work, or type of work, submitted.

The exhibition may be toured by the originating gallery or by the originating organisation to one or more other galleries.

Works in these exhibitions may or may not be for sale.

In some cases, artists and craft practitioners are paid a token fee for the use of their work, on other cases no fees are paid.

### **A.3.4 Exhibition Proposed by an Artist or Craft Practitioner (or Group) or Professional Art or Craft Organisation**

Regional galleries, contemporary art organisations and centres for craft and design accept exhibition proposals and call for these on a yearly or more frequent basis. The national or state art galleries never use this mechanism.

Proposals put to the gallery may be reviewed by a curator or team of curators, or by an individual or group empowered to judge the type of work submitted. Sometimes these exhibitions may be toured, in which case the host gallery may assist with organising the touring details.

Work on exhibition may or may not be for sale.

Artists and craft practitioners may or may not be paid a fee, depending on a number of factors including: whether the gallery accepts the proposal as part of its own programming; whether grant funding has been obtained to support the project; and whether the exhibition includes work for sale.

In some cases, work is displayed in a for-hire section of the gallery with limited support by the venue. In these cases, no fee is paid.

### **A.3.5 Art or Craft Prize, Award or Competition**

*Definition for this project: An exhibition resulting from a specifically advertised opportunity for artists or craft practitioners to place their work in a competitive situation in which there may be one or more monetary prizes or awards, with or without acquisition by the gallery of the work.*

This type of exhibition is a common mechanism used by some galleries to acquire works for their collection, with the acquisitive prize funds donated by sponsors or benefactors.

All sectors of publicly funded galleries either host or initiate prize or award competitions.

The work displayed in these exhibitions may be selected by a curator, a team of curators, or by an individual or group empowered to judge the merit of work submitted (for instance, a Board of Trustees or invited arts professionals). However in other cases, all works submitted are exhibited and there is no selection process.



Works are usually for sale. The exhibition may be toured by the originating gallery to one or more other galleries.

Current practice is that artists and craft practitioners are not usually paid a fee, unless the competition requires artists or craft practitioners to meet a particular brief, or where large and expensive works are to be created, in which case competition organisers may meet some fabrication and transportation costs plus a fee.

### **A.3.6 Exhibition Proposed by Community Groups**

Many regional galleries have a community access policy that provides opportunities for local community groups to display their work in the gallery. These groups may be members of a local art or craft guild or society, a regional arts council, a youth arts project or similar.

The work in these exhibitions is not usually selected, and no fees are paid.

The gallery may provide some financial and in-kind support, or, the work may be displayed in a for-hire section of the gallery. Work may or may not be for sale.

### **A.3.7 Fundraising Exhibition**

Regional galleries, contemporary art organisations and centres for craft and design may agree to host an exhibition to specifically raise funds for one or more charitable purposes. Work may be solicited from specific artists, and/or derive from an open invitation. The gallery may initiate and administer the exhibition or it may be another organisation.

In these exhibitions work is always for sale with the artists and craft practitioners making a contribution from the proceeds of sales.

No fees are paid.

### **A.3.8 Virtual Exhibition**

Some publicly funded galleries may provide links to sites where further work by exhibiting artists or craft practitioners may be seen as an extension of a current exhibition.

Other galleries and/or artist organisations may host entire virtual exhibitions without a venue at all.

Work in virtual exhibitions is not usually for sale. Fees may or may not be paid depending on whether the virtual work is associated with or consists of a curated exhibition.

## Best Practice for Artists and Publicly Funded Galleries

### SECTION B: PROPOSED CODES AND EXPLANATORY TEXTS

#### SECTION B.1

#### KEY TERMS

##### **B.1.1 Artist/Craft Practitioner**

A person who conducts a professional practice in any aspect of the visual arts and craft through the creation of original art or craft, and through the provision of expert advice and services in the visual arts and craft sector.

##### **B.1.2 Artist Fee**

The payment that an artist/craft practitioner receives for his or her time spent in the creation and/or installation and /or presentation of site-specific or ephemeral commissioned art/craft work for temporary exhibition in a public space or gallery.

##### **B.1.3 Artist Loan Fee**

The sum of money paid to an artist or craft practitioner to provide public access to his or her work displayed in a non-selling public context, such as in a public gallery. Sometimes known as an Exhibition Fee.

##### **B.1.4 Consignment**

An arrangement in which work is sold by a third party (the gallery or gallery shop) on behalf of the artist or craft practitioner. The work remains the property of the artist or craft practitioner until purchased by the buyer.

##### **B.1.5 Commission**

An agreed fee paid to a gallery, agent or other intermediary for their services.

##### **B.1.6 Competition, Award Or Prize Exhibition**

An exhibition of work by artists or craft practitioners who have responded to a call for entries into an event that offers one or more prizes or awards. The artists/craft practitioners who respond may be professional or amateur. The host gallery or event organiser may or may not select entries prior to the exhibition.

##### **B.1.7 Community Access Exhibition**

An exhibition arising from the local community includes the work of non-professional artists. For example an exhibition of work by a local group of students.

##### **B.1.8 Curated Exhibition**

An exhibition developed by a qualified curator employed by the gallery; or an exhibition arising from a curatorial proposal called for and accepted by the gallery for its annual program; or an exhibition curated by a third party accepted by the gallery (as in a touring exhibition).

### **B.1.9 Curator**

A professionally trained visual arts or craft administrator responsible for organising exhibitions around a particular genre or practice, and who selects existing work/s by artists or craft practitioners, or invites selected artists or craft practitioners to make new work for exhibition. Curators may be employed by publicly funded galleries or may be independent/freelance.

### **B.1.10 Deaccessioning and Disposal**

Removing a work of art or craft from a gallery's permanent collection governed by strict and specific criteria and processes.

### **B.1.11 Mark Up**

The percent increase applied by a retail shop to the wholesale value of a work to arrive at the final retail price.

### **B.1.12 Publicly Funded Gallery**

A not-for-profit gallery that receives the major proportion of its funding from state, federal or local government sources and is committed to collecting, conserving, presenting and/or promoting art and craft in the public interest.

### **B.1.13 Recommended Retail Price**

Sale price of work set by an artist or craft practitioner, or in conjunction with their agent or representing gallery. Commission is then deducted from this price.

### **B.1.14 Selling Exhibition**

An exhibition in which works are for sale. The artist/craft practitioner will receive proceeds from the sale minus any gallery commission.

### **B.1.15 Third Party Exhibition**

An exhibition that has been initiated and or organised by an organisation or group other than the publicly funded gallery that hosts it. These exhibitions may or may not be curated (see also Curated Exhibition and Community Access Exhibition).

# Best Practice for Artists and Publicly Funded Galleries

## SECTION B.2

### BEST PRACTICE FOR EXHIBITIONS IN PUBLICLY FUNDED GALLERIES

The four sectors of publicly funded galleries in Australia:

- National and State Galleries including Modern and Contemporary Art Museums
- Regional Galleries throughout Australia
- Contemporary Art Organisations (CAOs)
- Australian Craft and Design Centres (ACDCs)

have quite different policies and practices around the exhibition of work.

This document looks at how these differences impact on the relationship between publicly funded galleries and the artists and craft practitioners who exhibit in them, with recommendations for best practice conduct at the end. It also asks for your views regarding some of the difficult issues around which sector wide debate and policy development is needed.

#### B.2.1 Range of Activities

Publicly funded galleries offer a wide range of exhibition spaces and exhibitions types.

Some have large permanent collections that make up the majority of work on display whereas others show only temporary exhibitions of loaned or commissioned work from Australian and international artists. Some focus on specific media practices; some particularly encourage and support emerging and/or regional practitioners; some have associated studio and/or performance spaces; some publish critical journals. Most provide public education programs and other professional development opportunities such as seminars and conferences. All play an important role in bringing the work of contemporary Australian artists and craft practitioners to public attention.

These galleries offer a range of exhibition spaces and styles – from an online site – to a window on the street – to the more usual clean white gallery space. Most galleries have multiple spaces with multiple exhibitions running at the same time. Exhibition content ranges from the work of the most senior practitioners to unselected community access shows, and may include the work of a single artist or craft practitioner or of a group. In some publicly funded galleries, artists, craft practitioners, organisations and groups can hire space to display their work.

Exhibitions arise from many different sources. Gallery staff might curate an exhibition, or the gallery might work with an artist or craft practitioner to realise new work. Exhibitions may be accepted into a program from a proposal put to the gallery by an artist or craft practitioner. Sometimes galleries host an exhibition curated or organised by another organisation or institution, for example a graduating student show, or an exhibition by members of a group of artists or craft practitioners, or a touring exhibition sourced from another gallery. The gallery may host a competition, award or prize exhibition either on its own behalf (to acquire works for the collection) or on behalf of a third party (either non-profit or commercial). Some galleries host fundraising exhibitions either for their own benefit or for a third party (usually a charity).

In some publicly funded galleries, the work on display is never for sale. However an increasing number of publicly funded galleries also perform a retail function, selling the work of contemporary artists and craft practitioners either from exhibitions or from museum or gallery shops – for a discussion of issues around selling see Section B3 *Best Practice for Selling Art and Craft in Publicly Funded Galleries*.

This great diversity in how exhibitions are sourced, resourced, and presented all affects the way that galleries, artists and craft practitioners deal with each other artistically and financially.

## B.2.2 Mutual Benefit

In exhibiting the work of Australian artists or craft practitioners, the goal for both the gallery and the practitioners should be mutual benefit. Neither could function without the other and both stand to gain from the relationship.

In artistic terms, publicly funded galleries provide a range of opportunities for artists and craft practitioners to show new work, engage in creative and critical discourse, build audiences and enhance their reputation. This can be particularly important where work is not oriented to the commercial market. An opportunity to exhibit in a curated or commissioned show with a scholarly catalogue in a high profile venue is extremely valuable for the career development of visual artists and craft practitioners. While not all publicly funded galleries offer all of these benefits, every exhibition promotes the work of the artist or craft practitioner.

Australian artists and craft practitioners provide galleries with opportunities to achieve high quality programming. Audiences (taxpayers) and funding bodies expect publicly funded galleries to provide opportunities to experience contemporary work across broad media categories and subject matter. Exhibiting work of high calibre that is new, challenging and engaging can achieve for the gallery or organisation higher numbers of visitors, increased membership levels, and an enhanced profile in the international, national, state or local community.

In financial terms, both galleries and artists/craft practitioners may benefit directly and/or indirectly. The artist/craft practitioner may gain immediate, subsequent or referred sales or commissions, and an increase in the market value of their work. The publicly funded gallery may gain income from membership fees, commission on sales and associated retailing, and, in recognition of the quality of their program, increased funding from government and sponsors.

## B.2.3 Mutual Cost

Both the artist/craft practitioner and the publicly funded gallery invest time, energy and money to bring an exhibition to the public. Research indicates that cost sharing arrangements vary according to two significant factors: the type of exhibition and the operating budget of the gallery. For some exhibition types the gallery meets all or most of the expenses and for other exhibition types artists and craft practitioners subsidise the presentation costs to a considerable extent. Sponsors, benefactors, friends of the gallery, and grant funding may also provide resources to meet costs.

Where the initiator of an exhibition is the gallery itself, or where an artist or craft practitioner proposal has been incorporated into the gallery's core program, the gallery usually meets all or the majority of costs incurred in presenting the show. The practitioner will have met all or the majority of costs incurred in creating and documenting the work. If the gallery has commissioned new or ephemeral work (new media, installation or performance), the gallery contributes to labour and materials as well.

Where the initiator is a third party (another gallery, organisation, individual or group), it is usual for the third party to meet the cost of developing the exhibition. In some circumstances, the third party also must meet the majority of exhibition costs.

Where the exhibition is a competition, prize or award, artists and craft practitioners usually pay the gallery or the organiser an entry fee; the gallery pays for the presentation costs; and sponsors, benefactors or 'Friends' contribute prize or acquisition funding. Sometimes artists receive a loan fee or a contribution to expenses where competitions require new work to be submitted under strict guidelines. Where the exhibition is for fundraising purposes, artists and craft practitioners may donate some or all of the proceeds of sale of their work (and representing galleries may forego their commission).

The single most important factor influencing the degree to which galleries and practitioners meet exhibition costs is the level of funding that a gallery receives. Its operating budget and ability to attract additional project funding determines to a very great extent a gallery's capacity to provide financial and in-kind support towards an exhibition.

Larger and better resourced galleries are able to meet the majority if not all of the cost of promotion (advertising, signage, invitations, opening); catalogues (design and printing), installation (lighting,

labour, technical equipment and special requirements), freight (to and from the gallery), insurance, and fees to artists (for loan of the work and a range of other services provided).

Smaller and especially regional publicly funded galleries operating on limited budgets aspire to provide as much exhibition support as possible, but often ask artists/craft practitioners to bear some of the costs of presenting their work. In recognition of the lack of resources in regional areas, and to foster better access to the work of Australian artists and craft practitioners, the National Exhibition Touring Support scheme (NETS) is a network of arts organisations that facilitates the touring of contemporary art, craft and design. The program is supported by the federal government and offers a range of support services from assisting with grants, sponsorship and funding; development and management of tours; negotiating contracts with artists, organising galleries, and host venues; packing crating insurance and transport; and the development of educational resources. Artists and craft practitioners are paid loan fees and other fees for participation in public programs.

## **B.2.4 Issues Arising**

The following issues continue to be problematic for the relationship between publicly funded galleries and the artists and craft practitioners whose work is exhibited in them. NAVA and MA strongly suggest that the publicly funded galleries and their funding sources develop a cohesive policy approach to bring some uniformity, stability and predictability to their relations with artists and craft practitioners.

### **B.2.4.1 Non-payment of Fees**

Publicly funded galleries have largely accepted the principle that artists/craft practitioners should be paid fees for the use of their work, and for a range of other services they might provide such as lectures, workshops, and so on.

In 2005 NAVA conducted research into payment of fees by the publicly funded gallery sector, and the Australia Council is reviewing this at the present time. The research revealed that where publicly funded galleries are primarily funded by the federal government via the Australia Council, and to the extent that other public galleries have gained either Australia Council funding for exhibition projects or National Exhibition Touring Support (NETS) funding, the payment of artist fees is standard practice.

All state arts departments or ministries recommend the payment of artist fees and some mandate it for all exhibitions funded. Additional funding provided via the Visual Arts and Crafts Strategy has improved the capacity of some publicly funded galleries to pay artist fees or to increase the level of fees paid.

Where local government is the primary funding source for regional galleries, the payment of artist fees has largely been dependent on the gaining of state or federal project grants, the overall budget of the gallery and the priorities of individual directors. NAVA research established however that the majority of professional staff in this sector recognise that payment of fees to artists for the use of their work is 'best practice', although there is not always the budget to meet this.

However in spite of this, the lack of financial resources and the distinctions drawn between different types of exhibitions mean that payment of loan and other fees is still quite patchy. Payment of fees is extremely variable where an exhibition proposal has been accepted into the program from a third party, with the exception of exhibitions toured under NETS.

The payment of fees for other services that artists and craft practitioners provide to support exhibitions (lectures, floor talks, demonstrations, etc.) is also extremely variable, with many contractual agreements requesting these services without payment.

Artists and craft practitioners also have the right to be remunerated for the use of images of their work. Publicly funded galleries usually ask artists and craft practitioners for a licence to use images of their work for a range of purposes associated with promotion of the exhibition, production of the catalogue, and sometimes for educational materials and an archive or database. Some galleries also expect artists and craft practitioners to allow reproduction of their work for unspecified promotion of the exhibition or of the gallery.

All of these uses are outside of the 'fair dealing' exemptions and other exemptions in the Copyright Act. Changes to the Act in 2002 give artists and craft practitioners the right 'to communicate their work to the public'. This includes the right to licence use of images of their work in electronic media (email and websites). In addition there are new statutory rights providing for payments for the copying of reproductions of images (photocopying, slide duplication, etc). Many publicly funded galleries still expect artists to waive some or all of these rights.

These practices undermine the recognition of the status of artists and craft practitioners as professionals providing goods and services to the gallery for public use. They also diminish the income generating potential of the practitioner and their right to benefit from the use of their work, skills and knowledge. If publicly funded galleries value the contributions made by Australian artists and craft practitioners, these contradictions between principle and practice need to be addressed.

### **B.2.4.2 Exhibition Expenses Paid by Artists and Craft Practitioners**

Where artists/craft practitioners are expected to make a financial contribution to exhibition costs, it represents a request by the publicly funded gallery for the artist to subsidise the gallery's costs in presenting the work. While this may be justified in particular circumstances, current practices indicate that it is a way for under-resourced publicly funded galleries to keep costs down at the expense of those often least able to pay. Where exhibition costs are shifted onto practitioners, it is usually for components such as: advertising; signage; invitation and/or catalogue design and printing; postage; freight and transit insurance both ways; specialist display equipment; installation; opening catering or staffing; and cleaning/repainting of the space at the end of the exhibition.

For artists and craft practitioners and for public gallery arts administrators, the extreme variability of cost sharing arrangements and the expectation that artists will sponsor their own exhibitions to a greater or lesser degree leads to a great deal of heart ache and confusion in and about the industry.

## **B.2.5 What are your views?**

### **B.2.5.1**

**Should there be sector specific or sector wide guidelines identifying the circumstances in which publicly funded galleries will and will not pay loan fees? Could these be defined?**

### **B.2.5.2**

**Should there be a minimum fee paid for the use of work regardless of the number of artists exhibiting? What should this be?**

### **B.2.5.3**

**Where cost sharing is a factor of how some galleries operate, and notwithstanding the considerable contribution made by galleries to exhibitions, should there be individual sector, or sector-wide agreement, about the types of expenses, or a maximum level of expenses to be borne by artists/craft practitioners?**

### **B.2.5.4**

**Should expenses be tied to exhibition type? How would these be defined?**

**For example:**

- a. initiated by a gallery or accepted into a gallery's core program
- b. organised and presented by a third party
- c. competitions, awards and prizes
- d. fundraisers
- e. exhibitions in a for-hire space
- f. other?

### **B.2.5.5**

**Should there be sector wide agreement about the specific allowable uses of images of artists'/craft practitioners' work? About the payment of copyright licence fees?**

#### **B.2.5.6**

**Given that adequate levels of funding for all publicly funded galleries is not going to be achieved soon or at all, are there other measures that would help bring greater transparency, higher standards and predictability to exhibition practice?**

#### **B.2.5.7**

**What other issues need to be addressed?**

#### **B.2.5.8**

**Can your gallery or organisation endorse the following Best Practice Recommendations? What suggestions would you make?**

**Please forward comments to the consultant, Virginia Hollister, by the end of June: hollister@winsoft.net.au or PO Box 97 Rylstone NSW 2849.**

## **SECTION B.2.6**

### **Draft Best Practice Recommendations for Curated Exhibitions**

The draft best practice recommended below is for curated exhibitions (non-selling) in publicly funded galleries, but the principles are relevant to any gallery operating in the public sphere and for a wide range of exhibition types.

The following recommendations are indebted to the sample agreement produced by the Arts Law Centre of Australia *Loan of Artwork for Public Exhibition*, available for purchase at [www.artslaw.org.au](http://www.artslaw.org.au), and elements of sample loan agreements produced by Museums & Galleries New South Wales.

These recommendations could also become reference documents for the *National Standards for Australian Museums and Galleries* currently under development by the National Standards Taskforce.

#### **B.2.6.1 Policy statements**

- Publicly funded galleries should provide the details of their exhibition policies, including the payment of fees and cost sharing arrangements, in publicly available documents for the guidance of artists and craft practitioners, gallery staff, and Boards of management.

#### **B.2.6.2 Written contracts or agreements**

- A written exhibition contract or agreement between the gallery and the exhibitor, or the exhibition organiser and the exhibitor, should be used that makes mutual expectations clear and identifies the dates, location and title of the exhibition, and covers all of the issues in these recommendations.
- The contract or agreement should include a full and detailed list of works, including any preferred wording for copyright and attribution.
- The contract or agreement should include time lines for the delivery of work and all other supporting material (images, statements, CV or biography, etc).
- In the case of a gallery hosting an exhibition organised by a third party, the separate obligations and responsibilities of each of these parties should be identified through a contract between these parties. These separate obligations and responsibilities (publicity, catalogue, invitations, fees, insurance, freight, duty of care, etc) should also be communicated in writing to the exhibitors.
- Where a sponsor or sponsors are involved in an exhibition, the gallery should inform exhibitors of the sponsors involvement and the nature of its business interests prior to seeking confirmation of participation.



**B.2.6.3 Payment of fees for artists/craft practitioners**

- The contract should specify the date by which payment of fees can be expected.
- Artists/craft practitioners are entitled to loan fees for the use of work in curated non-selling public exhibitions. Fees paid should be no less than the minimum recommended rate – see Artist Loan Fees in the *Code of Practice for the Visual Arts and Craft Sector* section 5.2.9. The payment of fees should be standard practice and not dependent on grant funding for a particular artist, exhibition or tour.
- Artists/craft practitioners are entitled to licence fees for the reproduction of images of their work other than for 'Fair Dealing' and other exemptions under the Copyright Act.
- Artists' fees should be paid when the artist/craft practitioner has been commissioned by the gallery to create, install or present a work or works, including ephemeral work such as audio-visual and performance art. Such Artists' fees should include labour and materials costs and other expenses as negotiated between the artist/craft practitioner and the gallery. The points of payment should be included in the contract or agreement. In the case of installations, a separate design fee should be paid to the artist/craft practitioner if the installation is dependent on a detailed model and designs. See the recommendations in Special Purpose Commissioning, section 2.3 of the *Code of Practice for the Australian Visual Arts and Craft Sector*.
- Any artist/craft practitioner's work that is electronically linked to the exhibition should be regarded as part of the exhibition and the artist/craft practitioner remunerated for its inclusion.
- Artists and craft practitioners are also entitled to separate fees for:
  - workshops
  - demonstrations
  - lectures
  - writing other than the artist's/craft practitioner's statement.
  - For more information, see Fees and Wages, *Code of Practice for the Australian Visual Arts and Craft Sector*, sections 5.4 and 5.7.
- Artists should have airfares and per diems paid for interstate or regional travel in relation to the exhibition.
- For other types of exhibitions (competitions, community access, fundraising, emerging artist/craft practitioner, student and where work is for sale) publicly funded galleries should develop policies that clearly articulate in which circumstances fees will and will not be paid, the basis on which the level of fees will be determined, and who is responsible for paying these.

**B.2.6.4 GST Status**

- Both the gallery and the artist/craft practitioner should identify if they are ABN and GST registered, in which case each must supply a GST compliant tax invoice for goods and services provided. PAYG provisions will apply to parties not registered for GST.

**B.2.6.5 Transport and Installation**

- The gallery or exhibition organiser should arrange to pay for packing, freight and transit insurance of works both to the gallery and the repacking, freight and transit insurance from the gallery to the exhibitor, unless otherwise agreed with the exhibitor.
- The artist or craft practitioner should provide detailed packing instructions where this will assist in the safe handling of their work.
- The gallery should meet the costs of installation of the work in the gallery unless this is particularly difficult or unusual in which case the costs and requirements should be negotiated and agreed in writing with the exhibitor, including any potential damage that

might occur to the gallery during installation of the work. A condition report on the gallery may be required.

- The cost of restitution of the venue after removal of the installation should be borne by the gallery. If there is unanticipated damage, this should be covered by the gallery's insurance policy.
- For audio-visual and performance work, prior agreement should be reached between the gallery and the artist/craft practitioner on the work's duration, frequency, timing and public notification of that timing.

#### **B.2.6.6 Exhibition costs**

- The gallery or exhibition organiser should cover all of the exhibition costs for a curated (non-selling) exhibition including publicity, catalogue and invitations, freight and transit insurance to the gallery, unpacking and condition reporting, installation, opening event, insurance in the gallery, staffing, repacking, freight and transit insurance to the exhibitor.
- Any costs to the artist/craft practitioner, including income foregone or licence fees waived, should be negotiated and agreed to by the artist/craft practitioner and the gallery in advance in writing.
- Artists and craft practitioners may reasonably be asked to cover:
  - late changes instigated by the artist/craft practitioner to a publication such as a catalogue illustration
  - a different invitation to the gallery standard

#### **B.2.6.7 Sales Enquiries**

- The gallery should refer enquiries regarding sales to the artist or the artist's representative.

#### **B.2.6.8 Duty of care**

- The gallery and or exhibition organiser should exercise diligence and care when handling, storing, displaying, packing and transporting the work, and undertake to supply suitable display mechanisms, security, lighting, fire prevention and environmental controls.
- To ensure public access to the work, the gallery should take responsibility for ensuring that technical equipment for new media/digital works is fully functional during the hours agreed. The gallery also has a duty of care to notify the artist/craft practitioner of malfunctions and to deal with breakdowns promptly.
- The gallery exhibiting the work should assess the work and document its condition, its market value and any special conservation requirements.
- Should the gallery or exhibition organiser wish to reframe or remount the work, they must seek written permission from the exhibitor, and agree to return the work in its original frame or mount unless otherwise agreed.
- The gallery should maintain comprehensive insurance for the full value of the work as stated in the schedule.
- Should a work be damaged the artist/craft practitioner should be consulted in the first instance by the gallery and/or the owner of the work and given first option to repair the work or approve the chosen conservator. The gallery should cover the costs of repair.
- Should the damage be beyond repair, the artist/craft practitioner should be paid the full retail price of the artwork and the damaged work should be returned to the artist.
- If a work is withdrawn from exhibition by the gallery, for any reason, the artist/craft

practitioner should be notified immediately and reasons provided for the withdrawal.

#### **B.2.6.9 Obligations of the artist/craft practitioner**

- The artist/craft practitioner should deliver the agreed work in good order to the gallery at the agreed time and ensure that the gallery has sufficient information to correctly install and describe the work.
- The artist/craft practitioner should supply the gallery with a full descriptive list of works in the exhibition, including a description of the condition of works. This list should be checked by the gallery against the works delivered within a specified number of days, signed and a copy returned to the artist/craft practitioner as a receipt.
- The artist/craft practitioner and the gallery should consult regarding any health and safety implications of the work.
- The gallery may need to know whether the work has been shown before and how recently, and whether in close proximity to the exhibiting gallery, because the aim of the exhibition may be to break new ground or show new work. Therefore, the artist/craft practitioner should inform the gallery of any other exhibitions of his or her work occurring in the immediate period prior or subsequent to the exhibition. The artist/craft practitioner should be prepared to negotiate if necessary.
- The artist/craft practitioner should supply accurate biographical information to the gallery.
- The artist/craft practitioners should be responsible for their own documentation of the work while it is on exhibition. The Gallery should provide them with reasonable access to undertake this documentation.
- Where a sponsor or sponsors are involved in an exhibition, the artist/craft practitioner should properly inform themselves about the nature of the business interests of the sponsor prior to confirming participation.

#### **B.2.6.10 Media and promotion**

- Prior to the exhibition, the gallery and the artist/craft practitioner should agree on the extent and nature of the promotional activity to be undertaken by the gallery. The artist/craft practitioner should reserve the right to refuse to participate in some or all of the promotional activity.
- The artist/craft practitioner should receive at least 2 copies of the catalogue, and a copy of education materials produced for the exhibition.

#### **B.2.6.11 Copyright**

- The gallery or exhibition organiser should respect the copyright of the artist or craft practitioner and ensure that these rights are respected by all parties and the general public.
- All uses of an artist or craft practitioner's copyright should be subject to a licence agreement and a fee negotiated for that use.
- Reproductions of the work should not be permitted without the written permission of the artist or craft practitioner.

#### **B.2.6.12 Moral Rights**

- The gallery must appropriately attribute the creator of the work and must not alter or do anything that would compromise the integrity of the work or permit anyone else to do so while the work is in the gallery's care.
- The artist/craft practitioner and their representing gallery (if any) should be credited appropriately near the work on display and when images are reproduced for any purposes.
- For more information, see section 6.3.2. in the *Code of Practice for the Australian Visual Arts and Craft Sector*.

**B.2.6.13 Amendments**

- Amendments to the contract or agreement can only be made in writing by both parties.

**B.2.6.14 Jurisdiction**

- The contract or agreement should indicate which Australian state or territory legal jurisdiction governs the agreement.

**B.2.6.15 Disputes**

- When disputes occur the artist/craft practitioner and gallery should agree to follow a process that involves in the first instance, meeting to attempt a resolution; then if not resolved, seeking the services of a mediator or mediation service; and only then if not resolved, seeking arbitration or commencing litigation.

# Best Practice for Artists and Publicly Funded Galleries

## SECTION B.3

### BEST PRACTICE FOR SELLING ART AND CRAFT IN PUBLICLY FUNDED GALLERIES

Some publicly funded galleries sell works of visual art and/or craft from their exhibitions and many also have a museum or gallery shop from which work may be sold. The four sectors of publicly funded galleries in Australia:

- National and State Galleries including Modern and Contemporary Art Museums
- Regional Galleries throughout Australia
- Contemporary Art Organisations (CAOs)
- Australian Craft and Design Centres (ACDCs)

have quite different policies and practices around selling work. This document looks at how these differences impact on the relationship between publicly funded galleries and the artists and craft practitioners who sell in them, with recommendations for best practice conduct at the end. It also raises some of the difficult issues around which sector wide debate and policy development is needed.

#### B.3.1 Selling from Exhibitions – Some Do, Some Don't

The national and state galleries do not sell work from exhibitions. These are very well resourced public institutions whose stated role is to support artists and craft practitioners through high quality and high profile exhibition opportunities, and/or the acquisition of their work. These galleries generally exhibit mid career and established artists and craft practitioners, many of whom are represented by a commercial gallery. Selling would undermine the relationship publicly funded galleries need to have with commercial galleries to mount exhibitions and to acquire work. Sponsors and benefactors also play an important role in assisting the national, state and regional galleries to acquire work through purchase. Selling would undermine the premise of their involvement.

The majority of Contemporary Art Organisations (CAOs) also do not sell work from exhibitions. Most see their role as supporting artists that are making highly experimental and/or non-commercially focused work, especially new media, performance and installation work – so selling is not an anticipated outcome. However some CAOs will sell from the occasional exhibition.

The Regional Gallery network across Australia is a very diverse group of organisations that do sell work from exhibitions some of the time. These galleries often host competitions, prize and award exhibitions in which it is customary for work to be for sale. Similarly, many of these galleries organise or host fundraising exhibitions, either for their own benefit or for charitable purposes. Either or both of these exhibition types may be motivated by a community access ethos to encourage the display, and sale, of work from a wide range of artists and craft practitioners. However it is increasingly the case that regional galleries are also selling work on a regular basis from their curated exhibitions, and from exhibition proposals accepted into their annual program from institutions, organisations and individuals. Many of these galleries feel that offering a selling opportunity is an important service they can provide to regional artists where there may be little other arts infrastructure.

The Australian Craft and Design Centres (ACDCs) routinely sell work from exhibitions. This is in part due to the different history of these organisations. The majority of craft practitioners do not have professional representation by a commercial gallery. The craft and design centres arose out of state based membership organisations that have always strongly focused on educating, representing, promoting and marketing the work of their membership. With one exception these centres are not collecting institutions. Their curated exhibition programs (both in house, touring, and those hosted from proposals accepted from institutions or individuals) aim to enhance public understanding of

contemporary design and craft and introduce the work of new practitioners, and it has always been part of their role to provide selling opportunities.

Publicly funded galleries that sell work will take a percentage commission on the sale of the work. The work remains the property of the practitioner until the sale is made to the purchaser. The practitioner determines the retail price.

### B.3.2 Selling from Shops

Most publicly funded galleries have a museum or gallery shop. The merchandise sold through these outlets may be sourced from commercial suppliers (books, cards, posters, mugs, toys, and so on), other arts organisations (critical journals and other publications) or from contemporary Australian artists and craft practitioners (photographs, paintings, works of craft and design, artist's books, and so on). The range of merchandise is generally chosen to support and reflect the interests and activities of the gallery and/or the organisation, such as collection strengths where applicable or special focus exhibitions.

Sometimes gallery and museum shops approach artists and craft practitioners to specifically produce works for sale, in which case the shop manager or gallery curators commission work (see section 2.3 Special Purpose Commissioning, of the NAVA *Code of Practice for the Visual Arts and Craft Sector*). However it is more often the case that shops either agree to take existing work or encourage artists and craft practitioners to develop new work for sale through the venue without entering into a commissioning process. This work ranges from one-off pieces to items produced for more commercial merchandising purposes.

Each gallery or museum shop will have a different mix between commercial merchandise and work made by artists or craft practitioners – in some there will be little or no work by artists or craft practitioners and in other shops quite a lot. The capacity and willingness of a gallery or museum shop to handle original works and production items made by practitioners varies across the sector, with the most work by artists and craft practitioners appearing in retail venues associated with the Australian Centres for Craft and Design. In these shops, the majority of the merchandise is sourced from members of the organisation and other Australian makers.

Shops will either take work on a 'Sale or Return' basis, sometimes referred to as 'on consignment', or make an outright purchase of the work for resale. Some will only take work on consignment because work that does not sell can be returned to the artist or craft practitioner after a specified period in the shop. This reduces the financial outlay and commercial risk for the shop. As with a consignment sale of work from an exhibition, the artist/craft practitioner determines the retail price.

However there is an important distinction that needs to be made between a consignment agreement for the sale of work from an exhibition, and the consignment sale of work from a shop. In the latter situation, a written agreement may or may not be used in addition to a full and detailed list of works. The work is placed in the shop and when sold, the shop creates a tax invoice for the buyer (retail price plus GST) as if the gallery owned the work. The gallery then contacts the artist or craft practitioner and requests a tax invoice from the artist for the work it sold (wholesale price, + GST if the artist/craft practitioner is GST registered).

These two arrangements have tax implications for artists and craft practitioners - who should seek professional advice. Some guidance is available on line, see for instance *Artefacts: the arts and tax* available on the Australia Council website at [http://www.ozco.gov.au/arts\\_resources/publicatons/artefacts\\_the\\_arts\\_and\\_tax/files/445/08\\_issues.pdf](http://www.ozco.gov.au/arts_resources/publicatons/artefacts_the_arts_and_tax/files/445/08_issues.pdf); *The Artist and the GST: the confusion stops here* on the Arts Law Centre of Australia website at: <http://www.artslaw.com.au/LegalInformation/Taxation/01GSTConfusionStops.asp>; and *Tax, Artists and Galleries* on the National Association for the Visual Arts website at: <http://www.visualarts.net.au/advicecentre/taxation/artistsandgalleries>

Some shops will take work on consignment to 'test' the market and, once confident of a market for the work, will then purchase outright. When work is purchased outright, the work enters the 'stock' of the shop and the ownership of the gallery. This reduces time spent tracking the status of the work and getting back to artists and craft practitioners. It also allows the retail venue to vary the mark up and determine the final retail price. The artist or craft practitioner is paid the wholesale price + GST if applicable, and the work is then marked up to its final sale price + GST. The mark up on merchandise in museum and gallery shops can be anywhere from 10 per cent to 100 per cent, although in most

cases the work of artists and craft practitioners is charged at 33.33 per cent commission on the retail value of the work (exclusive of GST).

### **B.3.3 Issues Arising**

Whatever the benefits, selling raises a number of difficult issues for best practice in the relationship between publicly funded galleries and artists/craft practitioners, and between publicly funded galleries and the commercial sector. Some of these are explored further below with relevant questions for sector debate.

#### **B.3.3.1 Artist Loan Fees Not Paid**

Research indicates that most publicly funded galleries currently pay an artist loan fee (or would if they could) for participation in a curated exhibition or where an exhibition proposal has been accepted into the program (other than competitions and community access exhibitions). Fees are also routinely paid for touring exhibitions through the National Exhibitions Touring Support scheme (NETS).

However, if the exhibition is a selling show, fees are generally not paid although a few galleries do pay a loan fee in recognition that work may not sell.

#### **B.3.3.2 Varying Level of Commission on Sales**

When galleries sell works of art or craft on consignment they are acting as agents for the sale of that work and charge a commission fee to the artist/craft practitioner. Research indicates that commission fees in publicly funded galleries range from 10 to 50 per cent. This wide range of commission taken would seem to indicate an uncertainty about the appropriate level for a publicly funded gallery to charge.

In comparison, the level of commission on sales for commercial galleries, recommended in *The Code of Practice for Australian Commercial Galleries and the Artists They Represent*, (2003) endorsed and co-authored by the Australian Commercial Galleries Association, NAVA and the Australia Council ([http://www.acga.com.au/Code\\_of\\_ethics.pdf](http://www.acga.com.au/Code_of_ethics.pdf) or <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/codecommercial>) is that where a commercial gallery has an long term, ongoing, nurturing relationship with an artist or craft practitioner, a rate of 40 per cent commission is appropriate. (For more information on the services that a commercial gallery provides to justify this level of commission see section 1.2 of *The Code of Practice for the Visual Arts and Craft Sector: Commercial Galleries and Retail Outlets*).

The Australian Commercial Galleries Association recommends that the rate of commission on sales in publicly funded galleries should be significantly less than the private sector as most exhibitions represent a one-off relationship.

Where publicly funded galleries sell work through a retail venue, commission fees and mark up may also be very high. A commission fee of 40 per cent is not uncommon, and the mark up on work purchased outright can be 100 per cent. These fees and mark ups are similar to those in the private sector.

Complicating this debate is the principle articulated under National Competition Policy in 1995 by the Council of Australian Governments that government businesses should not enjoy a competitive advantage over their private sector competitors, or receive benefits as a result of their public ownership (such as taxpayer subsidy and freedom from income tax liability). When this policy was implemented, certain changes were made to the Trade Practices Act and many larger state and local government businesses (for example electricity and water supply) were restructured into corporations operating under similar regulatory regimes as the private sector.

However arts organisations, museums and cultural services have been exempted from legislative requirements to reform anti-competitive business practices in view of the scale of their operation (expenditure of less than \$10 million) and governments' categorisation of their activity as a

community service.

To date the visual arts and craft sector and their funding bodies have not effectively tackled the issue of publicly funded galleries competing with a private sector willing and capable and already performing the role of selling visual art and craft. No comprehensive research has yet been undertaken to estimate the impact on the private sector of the commercial activities of publicly funded galleries.

### **B.3.3.3 Artist or Craft Practitioner Contributions to Exhibition Costs**

Some publicly funded galleries require artists and craft practitioners to bear some of the costs of presenting exhibitions of their work (invitations, opening night, catalogues, installation, freight to and from the gallery, etc.). See the discussion of this reality in *Best Practice for Publicly Funded Galleries and Exhibitions*. At the same time many of these galleries are charging high rates of commission equivalent to a commercial gallery rate. This means that artists are paying the gallery up front for some of the costs of the exhibition and then again via commission fees.

### **B.3.3.4 Artists or Craft Practitioners Represented by a Commercial Gallery**

Research undertaken for *Don't Give Up Your Day Job – an economic study of professional artists in Australia* (Throsby and Hollister, 2003, Australia Council, Appendix Table 9.1) indicated that about 40 per cent of visual artists and craft practitioners use an agent, manager or gallery dealer to represent their work some or all of the time. This means that artists and craft practitioners find themselves paying commission to both the public funded gallery and their commercial gallery. It is becoming fairly standard that the private and public gallery agree to split commission equally. In so doing, the parties recognise that, as the publicly funded gallery does not offer the ongoing benefits of commercial gallery representation and the commercial gallery has not met any of the costs in presenting the work, neither is entitled to the full commission.

### **B.3.3.5 Balance of Selling to Non-Selling Exhibitions**

At one end of the spectrum the national and state galleries do not sell at all, the CAOs a little, the Regional Galleries a lot, and the ACDCs all of the time. At issue is whether selling affects in any way the programming of any publicly funded gallery due to pressure from artists and craft practitioners themselves (sometimes the membership); Boards; or the funding or management bodies seeking to maximise financial returns.

## **B.3.4 What are your views?**

### **B.3.4.1**

**Does the opportunity to sell work remove the agreed obligation on galleries to pay loan fees for the use of the work? Is this a fair trade off?**

**Or, should loan fees *always* be paid for curated exhibitions, regardless of work being available for sale? If there are any types of exhibitions exempt from loan fees, can these be defined?**

### **B.3.4.2**

**What should be the maximum level of commission on sales in taxpayer supported galleries in comparison to independent commercial entities? Should selling work in competition with the private sector be restricted in any way?**

### **B.3.4.3**

**What should be the maximum level of commission on sales where artists and craft practitioners are contributing to a range of exhibition expenses? Should a sliding**



scale be applied? How would this be determined?

#### **B.3.4.4**

What should be the maximum level of commission on sales where an artist or craft practitioner has a representing gallery? Should the principle of equal splitting of commission always be applied?

#### **B.3.4.5**

Given the diversity of circumstances and conditions under which publicly funded galleries sell from exhibitions, should there be sector specific guidelines regarding the balance between selling and non-selling exhibitions?

#### **B.3.4.6**

What other issues need to be addressed?

#### **B.3.4.7**

Can your organisation or gallery endorse the following Best Practice Recommendations? What suggestions would you make?

Please forward comments to the consultant, Virginia Hollister, by the end of June: [hollister@winsoft.net.au](mailto:hollister@winsoft.net.au) or PO Box 97 Rylstone NSW 2849.

### **SECTION B.3.5**

#### **Draft Best Practice Recommendations for Selling Art and Craft**

The following recommendations are indebted to the sample agreement produced by the Arts Law Centre of Australia *Consignment Agreement*, available for purchase at [www.artslaw.org.au](http://www.artslaw.org.au); the advice in Full Gallery Representation, section 1.2.1, and Work Bought Outright by Galleries/Retail Outlets, section 1.2.5 in the Code of Practice for the Australian Visual Arts and Craft Sector, 2<sup>nd</sup> edition, 2003, advice provided online from sites noted above, and conversations with the Museum Shops Association of Australia.

#### **B.3.5.1 Policy statements**

- Publicly funded galleries that sell work from exhibitions and shops should provide the details of their exhibition and retail policies, including commission charges and consignment arrangements, in publicly available documents for the guidance of artists, craft practitioners, gallery staff, volunteers and Boards of management.

#### **Selling Art and Craft from Exhibitions**

#### **B.3.5.2 Written contracts or agreements**

- A written consignment contract or agreement between the gallery and the artist/craft practitioner should be used as for Best Practice for Exhibitions in Publicly Funded Galleries (see those recommendations). However, because work is for sale, some components of the agreement between the gallery and artist/craft practitioner will vary. *These specific differences include the following:*

#### **B.3.5.3 Consignment**

- The agreement should indicate the start date and end date for the exhibition in the gallery, and include a full and detailed list of the works loaned and/or consigned for sale, signed as correct by both parties.
- The circumstances and handling of a breach or termination of the agreement should be clearly identified.
- Any extension or variation to the duration of the agreement should be subject to renegotiation by the parties.
- The work remains the property of the artist or craft practitioner until purchased by the buyer. The gallery should limit its agency function to the particular works in the exhibition for the duration of the exhibition, and refer any further enquiries to the representing gallery or the artist/craft practitioner.
- The Arts Law Centre of Australia advises artists and craft practitioners to use a written contract of sale between the practitioner and the buyer. Such a contract can include clauses

providing for a resale royalty to be paid if the work is sold subsequently, and can require the buyer to allow access to the work on certain conditions.

- Publicly funded galleries which sell work should facilitate the exchange of the practitioner's preferred contract of sale with the buyer. The gallery should provide the name and contact details of the buyer to the artist/craft practitioner.
- Practitioners and galleries should agree on steps to be taken in the event that a buyer will not agree to the terms of sale as set out in the contract. Any further negotiations on this issue should be undertaken by the practitioner with the buyer and the gallery will still be entitled to the commission should the sale go ahead.
- In addition to a contract of sale, practitioners should provide buyers with a sales invoice, or a GST compliant tax invoice if they are GST registered.
- Artists/craft practitioners and the gallery should negotiate regarding the presentation of similar work in other venues within geographic proximity of the gallery for the duration of the exhibition.

#### **B.3.5.4 Gallery's Commission and Costs**

- The agreement should clearly indicate the percent commission to be charged by the gallery on the sale of work. This amount should be based on the GST exclusive total retail value of the work.
- The artist should determine the retail price.
- Work should not be sold under its retail value. If a publicly funded gallery offers a discount to its membership, friends of the gallery, or for any other reason, the gallery should bear the cost of the discount.
- The responsibility for meeting costs associated with the delivery of the work to the gallery (packing, freight and transit insurance) and the return of unsold work to the artist (repacking, freight and transit insurance) should be negotiated and agreed in writing. In many consignment agreements, the artist usually pays for delivery and the gallery for return of the work.
- All other costs related to the presentation of the exhibition should be met by the gallery in return for the commission charged, and any costs to be met by the artist or craft practitioner should be identified, negotiated and agreed in writing, in which case a reduced commission fee should be charged.
- Publicly funded galleries should respect the artist/representing gallery relationship where it exists and negotiate to split commission equally between the galleries where necessary, or as otherwise negotiated.
- Where work in an exhibition has been sold, it should only be removed in exceptional circumstances prior to the stated end date of the show.

#### **B.3.5.5 Payment**

- Payment should be made within 30 days following the end of the month in which the work was sold, unless otherwise negotiated between the parties. The method of payment should be arranged between the parties.
- Penalties for late or non-payment should be identified in the agreement.
- Artists/craft practitioners may or may not be paid a loan fee for the use of work in a selling exhibition in a publicly funded gallery. The gallery should make their policy known to the artist.
- The gallery should pay fees for other services provided by artists and craft practitioners as in Best Practice for Exhibitions in Publicly Funded Galleries.

#### **B.3.5.6 GST Status**

- Both the gallery and the artist/craft practitioner should identify if they are ABN and GST registered, in which case each must supply a GST compliant tax invoice for good and services provided. PAYG provisions will apply to parties not registered for GST. The gallery and the artist should seek advice and be absolutely clear about their GST and other tax liabilities.
- The commission fee should be calculated on the GST exclusive retail price of the work.

#### **B.3.5.7 Duty of Care, Responsibilities of the Artist/Craft Practitioner, Copyright, Moral Rights, Jurisdiction and Disputes**

- See Best Practice for Curated Exhibitions in Publicly Funded Galleries.

## Selling Art and Craft from a Museum or Gallery Shop

### 5.3.5.8 Written contracts or agreements

- A written consignment contract or letter of agreement between the gallery and the artist/craft practitioner should be used as above. *Please note the following differences in the nature of the agreement between the gallery or museum shop and the artist or craft practitioner:*

### 5.3.5.9 Consignment

- The agreement should indicate the start date and end date for the duration of the consignment agreement, after which the parties should renegotiate to extend, terminate or alter the agreement.
- The agreement should include a full and detailed list of the works consigned for sale, signed as correct by both parties.
- The shop and the artist/craft practitioner should negotiate the process and timing of reporting by the shop regarding the sales status of the work (monthly, quarterly or other). The reporting process can be an opportunity to discuss feedback from buyers about the work.
- The agreement should indicate the manner in which work will be displayed and whether the work may be stored out of sight.
- The agreement should spell out the process of making payment on sales, and the treatment of sales made by periodic or delayed payment.
- Work 'on consignment' remains the property of the artist or craft practitioner until purchased by the buyer. The artist/craft practitioner should determine the retail price.
- The gallery should limit its agency function to the particular works consigned for the duration of the agreement negotiated, and refer any further enquiries to the representing gallery or the artist/craft practitioner.
- Freight and insurance for works to and from the gallery should be negotiated between the parties. Where works are for sale, transport and insurance of the work to the gallery is usually the responsibility of the artist/craft practitioner. Freight and insurance for the return of the works is usually the responsibility of the gallery or, where a work is sold, is the responsibility of either the purchaser or the gallery unless otherwise negotiated.

### 5.3.5.10 Gallery's Commission or Mark Up

- The agreement should clearly indicate the percent commission to be charged on the sale, and/or the percent the work will be marked up by the gallery shop. Note that 25% commission on the retail value of a work (exclusive of GST) = 33.33% mark up on the wholesale value of a work (exclusive of GST); 33.33% commission = 50% mark up; 40% commission = 66.66% mark up; and 50% commission = 100% mark up.
- Artists and craft practitioners can recommend a retail price, and should do so in order to maintain parity with the price of their work in other outlets. Artists/craft practitioners and the gallery should negotiate regarding the presentation of similar work in other venues to avoid over saturation of the marketplace.
- Where work has been bought outright for resale, the gallery or museum shop is the owner of the work and may determine the final retail price. See also the recommendations in *Work Bought Outright by Galleries/Retail Outlets*, section 1.2.5 of the *NAVA Code of Practice for the Australian Visual Arts and Craft Sector*.
- Work should not be sold under its retail value. If a publicly funded gallery offers a discount to its membership, friends of the gallery, or for any other reason, the gallery should bear the cost of the discount.
- All other costs related to the presentation of the work in the museum or gallery shop should be met by the gallery in return for the commission charged, and any costs to be met by the artist or craft practitioner should be identified, negotiated and agreed in writing, in which case a reduced commission fee or mark up should be charged.
- Publicly funded galleries should respect the artist/representing gallery relationship where it exists and negotiate to split commission equally between the galleries where necessary, or as otherwise negotiated.

### 5.3.5.11 Payment

- Payment should be made within 30 days following the end of the month in which the work was sold, unless otherwise negotiated between the parties. The method of payment should be arranged between the parties.

**5.3.5.12 Title and Copyright**

- When a work is sold, title in the work transfers to the purchaser.
- The artist/craft practitioner usually retains copyright in the work. Practitioners should investigate the limitations of copyright protection especially if they are moving into providing manufactured goods or extensive production runs, in which case design registration may be more appropriate. For more information, see <http://www.ipaustralia.gov.au/about/index.shtml>
- In order to facilitate copyright control, artists and craft practitioners should consider registering their work with a copyright agency such as Viscopy so that future owners of their work can negotiate a copyright licence for the use of images of their work.
- Photographs of work should not be permitted without the written permission of the artist or craft practitioner.
- Commercial uses of the artist's work should be negotiated separately and attract a licence fee – for example, for the production of merchandise such as postcards or t-shirts.
- For further information see section 6.2 Copyright in the *Code of Practice for the Visual Arts and Craft Sector*.

**5.3.5.13 Additional Responsibilities of the Artist/Craft Practitioner**

- The artist or craft practitioner should take responsibility for the work as merchandise and be prepared to remedy any faults or replace the goods.

**5.3.5.14 GST Status, Payment, Duty of Care, Moral Rights, Disputes**

- As before.

# Best Practice for Artists and Publicly Funded Galleries

## SECTION B.4

### A CODE OF ETHICS FOR PUBLICLY FUNDED GALLERIES

#### B.4.1 Issues

It is very important for publicly funded galleries to develop and disseminate written guidelines or a Code of Ethics to set standards for ethical behaviour in relation to the operation of the gallery. These should reflect the gallery's mission and goals and spell out practices and procedures to assist it to operate with integrity and transparency and to avoid, or deal with, conflict of interest situations.

Galleries that have failed to communicate clearly their expectations about the behaviour of their staff, boards and volunteers suffer when actual, or perceived, unethical decisions or questionable behaviours result in loss of goodwill and unwanted attention from the press, regulators, funders, and the wider industry. In a worst case scenario, inappropriate behaviour may be referred for the attention of the Independent Commission Against Corruption, and any case has the potential to damage reputations and relationships. These are very good reasons for galleries to adopt, or adapt, existing codes, and to ensure that they form part of the induction and training of staff, Board members and volunteers. This document notes the range of existing codes and points to some specific areas for attention for the Australian visual arts and craft sector.

Codes focus primarily and necessarily on the duty of the institution to provide ethical leadership and on the roles and responsibilities of the staff. The two most widely referenced codes in the visual arts and craft sector are the Museums Australia *Code of Ethics for Art, History and Science Museums* and *The International Council of Museums (ICOM) Code of Ethics*. The MA Code was first published in 1985 by the Council of Australian Museum Associations, and adopted in January 1994 when the Art Museums Association of Australia Inc., the Museums Association of Australia Inc., the Museum Education Association of Australia Inc. and the Council of Australian Museum Associations Inc amalgamated to form a single body, Museums Australia. The ICOM Code, updated in 2006, was developed for the guidance of institutions around the world.

These codes set useful standards regarding commercial activities, acquisitions to museum collections, disposal of collections, principles of professional conduct, the personal responsibility of staff members to collections; the public; the employing organisation; colleagues and the profession. They also deal with appointments, the abuse of professional position, conflict of interest and the overlap of personal and professional interests.

They cannot however incorporate guidance for all of the specific situations likely to be encountered in the visual arts and craft sector and this is why it is so important for each gallery to consider its own situation. One characteristic of the sector is that practitioners may be employed by, or otherwise involved with, publicly funded galleries as curators (employed or freelance or volunteer), as staff members or as serving Board members, or have personal relationships with people in these positions. The complex webs of relationship in and across the sector means there is significant potential for conflict of interest.

Conflict of interest can be dealt with in a number of ways including avoiding the behaviour causing the conflict, declaring the conflict and withdrawing from any decision making, and weighing up the advantages and disadvantages of a particular course of action and documenting the decision in light of these factors. The New South Wales Council of Social Services Management Services Unit has a number of practical and useful information sheets

<http://www.ncoss.org.au/projects/msu/downloads/resources> covering setting standards, codes of conduct, ethical decision making and managing conflict of interest, including a voluntary declaration form for use by all personnel binding them to ethical principles of conduct and decision making.

In publicly funded galleries, Board members are generally bound by specific legal and financial responsibilities as well as undertaking aspects of strategic planning and goal setting. It is important that Board members and volunteers are made aware of an organisations' Code of Ethics and agree to adhere to its principles. Some guidance for members of the Board or Committees of Management can be publicly accessed via the Australia Council downloadable document titled *On Board: Serving on the Board of an Arts Organisation* by David Fishel (2004, Commonwealth of Australia [http://www.ozco.gov.au/arts\\_resources/publications/on\\_board/](http://www.ozco.gov.au/arts_resources/publications/on_board/)) while further information can be found the book by the same author titled *The Book of the Board* (Federation Press, 2003, RRP \$49.95, <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862874435>).

Note that there are other useful resources that can assist in the development of guidelines. These include *The Code of Practice for Australian Commercial Galleries and the Artists They Represent*, (2003) endorsed and co-authored by the Australian Commercial Galleries Association, NAVA and the Australia Council ([http://www.acga.com.au/Code\\_of\\_ethics.pdf](http://www.acga.com.au/Code_of_ethics.pdf) or <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/codecommercial/>). The ACGA has also published protocols for selling work and for competitions, prizes and awards, available from the ACGA. Both the Association of Western Australian Art Galleries ([http://www.awaag.org.au/code\\_of\\_ethics.htm](http://www.awaag.org.au/code_of_ethics.htm)) and the Indigenous Art Trade Association (<http://www.arttrade.com.au/ethics.htm>) have short code of ethics statements available on their respective websites. The Indigenous Australian Art Commercial Code of Conduct is due to be published in late 2007 by NAVA.

## SECTION B.4.2

### Draft Recommendations for a Code of Ethics for Publicly Funded Galleries

The general principles outlined below are derived from the Museums Australia and International Council Of Museums Codes. Some principles have been spelled out in greater detail for emphasis regarding conflict of interest, commercial activities, acquisitions, deaccessioning and disposal.

#### What is your opinion?

#### Are there other issues to be addressed?

### B.4.3 Draft Code of Ethics for Publicly Funded Galleries

#### B.4.3.1 Professional Conduct

The Code should include specific statements regarding its expectations for the professional behaviour of its staff, boards and volunteers in relation to:

- adherence to the mission and goals of the gallery
- observance of relevant international and national legislation and all applicable codes
- conscientious discharge of duties
- maintenance of confidentiality
- awareness of protocols for working with Indigenous material and peoples
- responsible representation of the gallery to the public, to other museums and galleries, and to stakeholders
- responsiveness to enquiries and appropriate research
- training of new Board, staff and volunteers.

For the specific wording of relevant clauses, not repeated here, please refer directly to <http://www.museumsaustralia.org.au/dbdoc/maethics.pdf> and to <http://icom.museum/ethics.html>

#### B.4.3.2 Conflict of Interest

The Code should describe or refer to policies and procedures to avoid actual or perceived conflict of interest or potential financial benefit to anyone closely associated with the gallery.

- A gallery's board, staff and volunteers must not accept benefits where those benefits could be perceived as potentially influencing their impartiality in the performance of their duties. For example inducements such as money, gifts, benefits, entertainment or employment opportunities in order to achieve the acquisition, promotion or exhibition of work by a particular visual artist or craft practitioner.
- A gallery's board, staff and volunteers must avoid situations in which they stand to realise financial gain or otherwise be advantaged by their position with the gallery. For example, practitioners should not exhibit with a gallery during the period in which they are serving on the Board of that organisation.
- A gallery's board or staff must declare a conflict of interest where:
  - there is decision to be taken regarding an artist/craft practitioner with whom there is a personal or professional relationship or where there is a relationship with the gallery representing that practitioner
  - there is a financial interest on the part of the staff or Board member in the market value of an artist/craft practitioner's work by virtue of prior ownership and/or prior collection of that artist's or craft practitioner's work, and/or actual competition to purchase a work.
  - there is an offer of outside employment or an emerging business interest that conflicts with the gallery's core activities

#### B.4.3.3 Commercial activities

The Code should describe what constraints should apply regarding its involvement with commercial activities, including:

- commercial sponsorship of the gallery's exhibitions, publications, education programs or acquisitions; the prominence of the sponsor's name and logo in any promotional materials; and the degree of influence brought to bear by a sponsor on the performance of the gallery or museum
- hosting competitions, awards or prizes organised by commercial entities. Galleries should ensure that competition rules and guidelines meet best practice and do not involve exploitation of practitioners' copyright
- selling artists'/craft practitioners' work via exhibitions and via retail outlets such as a museum or gallery shop. Galleries should ensure that its discounting policies and rate of commission does not exploit the artist/craft practitioner nor penalise the commercial gallery sector. Where a commercial gallery represents an artist, commission should be split.

#### **B.4.3.4 Acquisitions to a Collection**

The Code should include or refer to specific policies covering procedures for the acquisition, care and use of collected works, including:

- the gallery should clearly indicate that it will not buy work from, or accept loans, gifts or bequests of work from, members of the gallery's board of management, trustees, or staff, their professional associates or families
- the moral rights and copyrights of artists and craft practitioners in relation to works acquired should be acknowledged and respected
- copyright licences should be sought where the gallery desires to reproduce the work/s for any purposes outside of the exemptions allowed in the Copyright Act. For example, these exemptions do not cover promotional purposes such as catalogues and gallery websites, or commercial purposes such as reproductions on postcards, t-shirts, or other merchandise.

#### **B.4.3.5 Deaccessioning and Disposal**

*The Code should include or refer to specific policies that clearly articulate the circumstances in which works might be deaccessioned through donation, transfer, exchange, sale, repatriation or destruction.*

- Galleries should only deaccession work following careful consideration and should follow strict procedures and observe legal requirements. It is recommended that works be donated to another gallery in the first instance.
- The gallery should determine who has the authority to deaccession a work.
- The gallery should not allow deaccessioned works to be purchased by trustees, boards or museum personnel, their families or close associates.
- In the case of living artists, deaccessioning or disposal should be limited to works that have deteriorated beyond repair, or where the work is duplicated in the collection, or the gallery wishes to upgrade its representation of that artist and works with the artist to achieve this outcome.
- Galleries should take reasonable steps to inform artists when their work is to be deaccessioned or disposed of from the gallery's collection.
- Any income arising from deaccessioning should be used for further acquisitions for the collection, and never to raise general revenue for a gallery.

#### **B.4.3.6 Public Interest**

The Code of Ethics, and any specific policies that underpin the code, should be publicly available.

*Comments on these documents should be forwarded to the consultant, Virginia Hollister, by the 29th June:  
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