

INDIGENOUS AUSTRALIAN ART CHARTER OF PRINCIPLES FOR PUBLICLY FUNDED COLLECTING INSTITUTIONS

OVERVIEW: ROLE OF CHARTER

Australia's publicly funded collecting institutions are vital supporters of the rights of Indigenous Australian artists. In accordance with their responsibility to build, preserve and present significant Australian collections to the highest legal, ethical and professional standards, publicly funded collecting institutions play a leadership role in both the domestic and international collections sector by utilising and promoting best practice policies and procedures for the acquisition, commissioning, display, loan and deaccession of significant objects, including works of art.

Within this broader role, publicly funded collecting institutions are also uniquely positioned to exemplify best practice dealings with not only Indigenous artists and their works of art, but also their communities, and therefore positively influence the behaviour of the collections sector and participants in the Indigenous visual arts and craft industry.

Although publicly funded collecting institutions do not generally engage in the commercial resale of Indigenous works of art, they can significantly influence the Indigenous visual arts and craft market. This influence stems from the considerable capital that publicly funded collecting institutions may invest to purchase or commission an Indigenous work of art, the esteem and other benefits that accrue to the Indigenous artists whose works they acquire, and their preeminent role in researching and exhibiting collections of Indigenous art in order to educate both Australians and other nations about Indigenous art practice.

It is acknowledged that publicly funded collecting institutions at national, state, regional and local levels are practised in the development of policies, procedures and protocols to ensure that the rights of artists, including their moral rights, intellectual property rights, copyright, right to fair and informed negotiations and right to appropriate remuneration, are adequately communicated to them and upheld at all times. These policies and procedures are informed by national and international codes of ethics and best practice for museums, galleries, libraries and archives.

This Charter of Principles is intended to complement the existing suite of laws, collecting policies, and other relevant, peer reviewed codes of ethics and best practice guidelines, including the Indigenous Australian Art Commercial Code of Conduct, which establish and implement artists' rights. It affirms minimum ethical principles for all dealings between publicly funded collecting institutions and Indigenous artists, their representatives and communities. As such, the Charter represents an agreed minimum standard for Australia's publicly funded collecting institutions to apply in acquiring, commissioning, displaying and deaccessioning Indigenous works of art.

The Charter also strongly encourages Australia's publicly funded collecting institutions to continue to actively promote best practice ethical principles, where appropriate, during their dealings with the broader collections sector and the Indigenous visual arts and craft industry. The role of publicly funded collecting institutions as exemplars and their promotion of ethical principles remain essential due to continuing reports of Indigenous artists, their representatives and their communities being vulnerable to specific disadvantages when engaging in the Indigenous visual arts and craft industry.

The adoption of this Charter of Principles by Australia's publicly funded collecting institutions is strongly encouraged as it represents an opportunity to confirm and publicise their leadership role in upholding the rights of Indigenous Australian artists and positively influencing Indigenous collections practice across Australia and the world. Although the Charter is voluntary and self regulated, it is expected that publicly funded collecting institutions that adopt the Charter actively support and fulfil its principles, which apply to all dealings with Indigenous works of art, Indigenous artists and their representatives and communities.

BACKGROUND

In June 2007, the Senate Standing Committee on Environment, Communications, Information Technology and the Arts tabled in the Australian Parliament a report entitled *Indigenous Art – Securing the Future*. This Senate Inquiry into Australia's Indigenous visual arts and craft sector was undertaken in response to reports of unscrupulous conduct, particularly unfair treatment of Indigenous artists, in the Indigenous visual arts and craft industry.

Key recommendations of the Senate Inquiry report called for Australia's Indigenous visual arts and craft industry to finalise and introduce an Indigenous Australian Art Commercial Code of Conduct (Code). The Senate Inquiry report recommended that this Code should be voluntary in its first two years of operation. It was also recommended that if problems continue to persist after this period, the Australian Government should consider the introduction of a mandatory commercial code of conduct. The Australian Government agreed to these recommendations in its response to the Senate Inquiry, which was tabled on 8 August 2008.

In August 2009, a final draft of the Code was endorsed by the Industry Alliance Group formed to guide its development, which comprised approximately 40 representatives from the Indigenous visual arts sector.

- Persons or entities handling commercial transactions in Indigenous works of art, including dealers, agents, art galleries, auction houses, art centres, wholesalers and retailers (as defined in the Code), are strongly encouraged to apply to become signatories to the Code.

In response to consultation feedback received on the draft Code from various stakeholders in the Indigenous visual arts and craft industry, in February 2009 Cultural Ministers Council (CMC) Standing Committee called for the additional development of an Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions (Charter). As major non-commercial entities, publicly funded collecting institutions cannot sign up to the commercial Code in order to signal their conformity with best practice ethical principles for dealing with Indigenous works of art and Indigenous artists, their representatives and communities.

- All national, state, regional and local publicly funded collecting institutions (as defined in this Charter) are strongly encouraged to adopt this Charter.
- Collecting institutions based in universities or other collecting institutions that consider themselves to be publicly funded (as defined in this Charter) are also encouraged to adopt this Charter.

The Australian Government has developed this Charter in consultation with the national collecting institutions through the Heads of Collecting Institutions (HOICI) forum and state and territory collecting institutions and officials through CMC Standing Committee.

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PART 1: INTRODUCTION

1. Purpose of Charter

The purpose of this Charter is for publicly funded collecting institutions to affirm their continuing commitment to:

- (a) dealing fairly and ethically with Indigenous artists and their representatives and communities at all times, in all dealings, and keeping clear written records of these dealings to sustain accountability; and
- (b) promoting the importance of the professional and ethical principles contained in this Charter, where appropriate, when dealing with other members of the collections sector and Indigenous visual arts and craft industry.

Most, if not all, publicly funded collecting institutions have already implemented the principles affirmed in this Charter by developing their own ethical policies and procedures. The intent of this Charter is to reflect the best practice ethical principles currently used by publicly funded collecting institutions, and to encourage the promotion of these principles as a collections sector statement of ethics for dealing with the Indigenous visual arts and craft industry.

2. Application of Charter

- 1) The best practice ethical principles outlined in this Charter apply to all dealings concerning Indigenous works of art conducted between a publicly funded collecting institution and an Indigenous artist or his or her representative or community, from the date that a publicly funded collecting institution adopts this Charter. The principles do not apply retrospectively to previously acquired Indigenous works of art, unless a new dealing concerning a previously acquired Indigenous work of art occurs following the adoption of this Charter.
- 2) A publicly funded collecting institution is taken to have adopted this Charter from the date on which it publishes the Charter as a corporate policy on its website.

Note: If CMC endorses this Charter, it will also be published on the CMC website at www.cmc.gov.au.

- 3) If a publicly funded collecting institution does not have a website, it is taken to have adopted this Charter from the date that the head of the institution provides a letter to the CMC Secretariat stating that the Charter has been adopted.¹

¹ The appropriate contact details are: Cultural Ministers Council Secretariat – Arts Division
Department of the Environment, Water, Heritage and the Arts
GPO Box 787
Canberra ACT 2601
Tel: +61 2 6275 9536
Fax: +61 2 6275 9663
Email: contact@cmc.gov.au

- 4) A publicly funded collecting institution that adopts this Charter should amend, as soon as is practicable, any element of its existing policies, procedures and protocols that may conflict with the ethical principles reflected in this Charter.

3. Conflict with existing law

Where there is any conflict or inconsistency between the principles contained in this Charter and any existing Commonwealth, state or territory law, that existing law shall prevail to the extent of the conflict or inconsistency.

PART 2: CHARTER OF PROFESSIONAL PRINCIPLES AND ETHICS

Publicly funded collecting institutions that adopt this Charter agree and commit to the following principles:

2.1 Principles for dealing with Indigenous artists

1. When undertaking any dealing with an Indigenous artist or his or her representative or community in relation to an Indigenous work of art, a publicly funded collecting institution has regard to relevant domestic laws, including the institution's enabling legislation (if applicable), and relevant national and international codes of ethics, best practice guidelines and protocols which inform fair, sensitive and effective consultation with Indigenous artists and their representatives or communities.

2. A publicly funded collecting institution respects the cultural rights of Indigenous artists by consulting with Indigenous artists or their representatives or communities, and obtaining relevant permissions, in order to determine and implement the appropriate treatment of any culturally sensitive information related to an Indigenous work of art. This includes the appropriate citation of a deceased Indigenous artist's name.

3. A publicly funded collecting institution upholds the moral rights, copyright and intellectual property rights of an Indigenous artist at all times, including on its website, promotional materials and any other reproductions of an Indigenous work of art. When acquiring, commissioning, loaning or deaccessioning an Indigenous work of art, a publicly funded collecting institution keeps clear written records of the relevant Indigenous artist's design control registration and other intellectual property rights, as well as the correct means of attributing work to the artist and displaying works in accordance with the artist's moral rights.

Upon request by the relevant Indigenous artist or his or her representative, a publicly funded collecting institution makes these written records available to the artist or his or her representative in an appropriate format.

4. When negotiating the acquisition or commission of an Indigenous work of art with an Indigenous artist or his or her representative or community, a publicly funded collecting institution clearly explains the nature and substance of the key terms of the acquisition or commission to the Indigenous artist or his or her representative or community, as outlined in principle 10 of this Charter. Upon request, a publicly funded collecting institution also provides a record of these terms to the artist or his or her representative or community in an appropriate format.

5. A publicly funded collecting institution ensures that all staff dealing with an Indigenous work of art, Indigenous artist or artist's representative or community in the course of their duties have read, and are made fully aware of, any relevant domestic laws, internal policies and national or international codes of ethics, best practice guidelines or protocols used by the publicly funded collecting institution to inform ethical consultation and negotiation with Indigenous artists, their representatives and communities. These policies are made available upon request in an appropriate format.

6. A publicly funded collecting institution does not engage in any type of misleading or deceptive conduct or conduct that is likely to mislead or deceive, including making false or misleading representations, when dealing with an Indigenous artist or his or her representative or community.

7. A publicly funded collecting institution does not engage in any type of unconscionable conduct (as specified in the Code) in any dealing with an Indigenous artist or his or her representative or community.

2.2 Principles for dealing with Indigenous works of art

8. When undertaking any dealing concerning an Indigenous work of art, a publicly funded collecting institution has regard to relevant domestic laws, including its enabling legislation (if applicable), and relevant national and international codes of ethics, best practice guidelines and protocols which govern or inform the acquisition, commissioning, display, loan or deaccession of Indigenous works of art.

9. When acquiring or commissioning an Indigenous work of art, a publicly funded collecting institution keeps clear written records of the payment made to an Indigenous artist, the method used to determine the payment amount, any cooling-off periods agreed with the artist or his or her representative or community, and any factors known to the publicly funded collecting institution that could affect when the artist will be paid. Upon request, a publicly funded collecting institution also provides records of these remuneration terms to an Indigenous artist, or his or her representative or community, in an appropriate format.

10. The key terms that a publicly funded collecting institution records and communicates to an Indigenous artist or his or her representative or community in relation to any acquisition or commission include the details outlined in principles 2, 3, 9 and 14 of this Charter, as well as details of the design brief and any agreement regarding the exclusivity of an artist's time for commissions. These key terms are communicated in the format requested by the artist or his or her representative or community.

11. A publicly funded collecting institution exercises due diligence by making its best efforts to ensure that reasonable provenance details (to the extent that these are available) are confirmed prior to acquiring an Indigenous work of art. A publicly funded collecting institution does not acquire an Indigenous work of art if available evidence raises significant doubts about the credibility or authenticity of its provenance information, or suggests that the work of art has not been offered for acquisition with the full knowledge and consent of the Indigenous artist or his or her representative or community; or that the Indigenous artist or his or her representative or community will not benefit from the proceeds of the acquisition in accordance with his, her or their rights.

12. A publicly funded collecting institution does not sell or gift an Indigenous work of art following its deaccession without providing the full provenance details (to the extent that these are available) at the same time.

2.3. Principles for keeping records

13. A publicly funded collecting institution keeps clear written records of all negotiations and agreements with an Indigenous artist or his or her representative or community. In the event of a dispute, these records are referred to and are provided to an Indigenous artist or his or her representative or community in an appropriate format and reasonable timeframe.

2.4 Principles for handling complaints

14. A publicly funded collecting institution has accessible and ethical procedures for the efficient and fair handling of complaints, in accordance with existing laws and with regard to the requirements outlined in relevant national and international best practice guidelines, including clause 20 of the Code.

2.5 Principles for reporting on fulfilment of this Charter

15. A publicly funded collecting institution that adopts this Charter will report on the extent of its implementation and observance of the Charter in its annual report.

PART 3: DEFINITIONS

Unless the contrary intention appears, in this Charter:

acquisition means to obtain an Indigenous work of art for the collection of a publicly funded collecting institution, whether through purchasing it, commissioning it, or receiving it as a gift.

Code means the Indigenous Australian Art Commercial Code of Conduct².

commission means to negotiate and enter into an agreement with an Indigenous artist or his or her representative to create an Indigenous work of art.

collections sector is a term used to broadly denote all organisations and individuals handling collections across the four collecting domains of museums, galleries, libraries and archives. These include, but are not limited to: all publicly funded collecting institutions; not-for-profit art spaces, exhibition galleries and collecting organisations; all privately owned, operated or funded collecting organisations; and all individual collectors.

culturally sensitive information means all information and knowledge of special religious, spiritual or customary significance, which is considered to be secret, exclusive or restricted by an Aboriginal or Torres Strait Islander person according to Aboriginal or Torres Strait Islander tradition.

deaccession means the administrative method or procedure by which an Indigenous work of art is permanently removed from the inventory or collection register of a publicly funded collecting institution.

department means the Australian Government Department of the Environment, Water, Heritage and the Arts, or any other Australian Government department or agency that is, from time to time, responsible for the administration of this Charter, including successors to the Department of the Environment, Water, Heritage and the Arts.

due diligence means the requirement for a publicly funded collecting institution to make every endeavour, within its ability and resources, to establish the facts of a case before deciding on a course of action, particularly when identifying the source and history of an Indigenous work of art offered for acquisition or use before accepting it.

Indigenous artist means any artist, whether living or deceased, who creates an Indigenous work of art, and who is of Aboriginal or Torres Strait Islander descent, identifies as Aboriginal or Torres Strait Islander, and is recognised as such by members of the community with which the artist identifies.

Indigenous artist's community means the Aboriginal or Torres Strait Islander community with which an Indigenous artist identifies, and by which the artist is accepted as a member.

Indigenous artist's representative means a person who is nominated by an Indigenous artist to have the authority to speak or act on the artist's behalf.

Note: If a deceased Indigenous artist's next of kin and/or descendant can be identified and no other representative nominated by the Indigenous artist exists, a next of kin or descendant may act as the Indigenous artist's representative. If a deceased Indigenous artist's next of kin and/or descendant cannot be identified and no other representative nominated by the Indigenous artist exists, a respected senior member of the Indigenous artist's community, who

² The Code is available at www.indigenouartcode.org.au

is authorised to speak on behalf of that community, may act as the Indigenous artist's representative.

Indigenous work of art means a work of visual art or craft produced by an Indigenous artist, whether or not it is incorporated into another work of visual art or craft produced by that artist or another artist. An Indigenous work of art includes, but is not limited to, painting, drawing, artists' books, woodwork, ceramics, glasswork, jewellery, sculpture, fibre work, printmaking, installation work and video, multimedia and photographic works created primarily for artistic purposes. An Indigenous work of art does not include video, multimedia and photographic works created primarily for documentary purposes, or artefacts created primarily for utilitarian purposes.

Note: Where it is uncertain whether an object is an Indigenous work of art, publicly funded collecting institutions should follow their established research and significance assessment methodologies in order to determine the status of the object. These research and significance assessment methodologies should provide for consultation with external experts where internal expertise and records are not sufficient to determine the status of the object.

moral rights, in relation to an Indigenous work of art created by an Indigenous artist, means:

- (a) a right of attribution concerning the work of art;
- (b) a right not to have the work of art falsely attributed; and
- (c) a right of integrity concerning the work of art.

payment means any remuneration or royalty paid in the form of Australian currency.

provenance means the history of ownership of an Indigenous work of art.

publicly funded collecting institution means a not for profit museum, gallery, library or archive which receives the majority of its funding for administrative and operational purposes from one or more levels of government.

Note: Collecting institutions based in universities or other collecting institutions that meet this definition are also encouraged to adopt this Charter. However, those collecting institutions, businesses or individual collectors, including collecting institution shops, which act as agents or dealers and/or complete commercial transactions in Indigenous works of art, are encouraged to apply to become signatories to the Code.