CHAPTER 9

TAX, INSURANCE AND OCCUPATIONAL HEALTH AND SAFETY

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9.1 TAX
This section of the Code provides an overview of the taxation regimes affecting art/craft/design practitioners (and the individuals and businesses with which they deal). It has been prepared as an introductory guide only.

Disclaimer: All details should be checked with a tax adviser and/or the Australian Tax Office (ATO) through their publications, website www.ato.gov.au or telephone advisory Infoline (132861 for personal tax, 132866 for business tax).

9.1.1 Introduction to ABN, GST, PAYG and Explanation of Terms
The goods and services tax (GST) was introduced on 1 July 2000. It is a broad-based tax of 10 per cent on the sales or supplies of most goods, services, or other items sold or consumed in Australia. If GST is included in the price, to calculate the GST component, divide the price by 11.

The GST system works by GST being paid at each step in the supply chain. GST-registered individuals or organisations must include GST in the price of goods or services they supply or sell. GST-registered individuals or organisations can claim back the GST included in the price of their purchases as input tax credits if it is related to their business. The cost of GST is ultimately borne by the end consumer who cannot claim back input tax credits.

The ATO website provides more detailed explanations and examples of how the GST system works, as well as explaining what constitutes a taxable sale and the record-keeping and reporting requirements for anyone who is GST-registered.

An Australian Business Number (ABN) is a number which is used by businesses in all dealings with the ATO. In order to register for the GST, you must have an ABN. However, you can choose to obtain an ABN and not register for the GST if your business income is below $75,000 per annum.

A Tax Invoice is a document which shows the price of a sale, indicating whether it includes GST, and may show the amount of GST. It must show other information, including the ABN of the supplier. A tax invoice is required for all purchases over $75 in order to claim an input tax credit.

A Business Activity Statement (BAS) is the form used to account for GST and other business taxes and obligations to the ATO for each tax period. Depending on their level of income from their art practice, practitioners may choose:
- To register for the GST (which requires obtaining an ABN).
- To acquire an ABN, but not register for the GST.
- Not to acquire an ABN or register for the GST.

GST Registered
GST registration is compulsory if an independent contractor such as a practitioner derives income from their art/craft/design totalling $75,000 per year or greater. Practitioners who have acquired an ABN and are registered for the GST are operating as ‘a business’. They must include a GST amount in the price of any goods or services they provide. If they are providing works of art/craft/design to a gallery or retail outlet, the sale price must include a GST component, which the practitioner collects (or the gallery/retail outlet collects on the practitioner’s behalf if the work is provided on consignment) and forwards to the ATO. GST registered practitioners can claim input tax credits on the GST component of the cost of materials, equipment and other items related to the production and sale of their work, including the GST component of commission fees charged by the gallery. These practitioners must undertake the necessary paperwork to meet ATO requirements such as regular Business Activity Statements (BAS). Practitioners ‘in business’ will also need to forward Pay As You Go (PAYG) income tax instalments to the ATO if the most recently lodged Income Tax Return resulted in a taxation liability as a result of the business.

**ABN and Not GST Registered**

Some practitioners may have decided to get an ABN but not register for the GST if their arts practice income is below $75,000 per annum. Having an ABN is useful because the practitioner is still considered to be ‘in business’, and therefore other businesses with whom they deal will not be required to withhold 46.5% of any payment as required under Pay As You Go (PAYG). However they cannot charge GST on goods and services they provide. Their decision not to register for GST will have been made based on their overall income position; their unwillingness to undertake the necessary paperwork; and their preparedness to absorb the GST component of materials, equipment, and other items related to the production of their work, including the GST component of any commission fees charged by the gallery/retail outlet (the full amount of these costs can be claimed as professional expenses at the end of the financial year). Because these practitioners must absorb additional GST costs, they may earn less from each sale than those registered.

**No ABN and Not GST Registered**

Practitioners who do not acquire an ABN and do not register for the GST may have more difficulty in being recognised as being ‘in business’ by the ATO. This may have implications for practitioners who want to offset their art making expenses against income earned from other sources (such as teaching, administration etc) under non-commercial losses tax legislation. It may also mean that businesses making payments to the practitioner will ask the practitioner to complete a Statement by a Supplier: reason for not quoting an Australian Business Number (ABN) to an enterprise (also known as a ‘Hobbyist Statement’) before any payment is made. This standard form provides a number of options as to why an artist should not have 46.5% PAYG tax withheld.

**Indigenous Artists in Remote Communities—Exemption from the Requirement to Have an ABN.**

Special arrangements were implemented by the ATO to assist Indigenous practitioners living in remote communities, classified as Special Zone A. For information on whether they still exist, contact the ATO.
Organisations
Most galleries (public and private), agents, retail outlets, commissioners (unless private individuals), organisers of residencies, workshops, competitions and prizes (unless charities) and sponsors (unless private individuals) are required to have an ABN and be GST-registered.

It is important that the tax relationship between practitioners and any of the above users of their work is clearly understood by both parties, and properly documented in any contracts or agreements between them. All parties should undertake to educate themselves about the implications of the tax system for their professional practice and regularly update their knowledge by consulting with organisations such as the National Association for the Visual Arts (NAVA), Arts Law Centre of Australia, their tax adviser and the ATO’s website and publications.

9.1.2 GST for Selling Art/Craft/Design
The many types of relationships between practitioners and those who sell their work. The following focuses on the tax implications for all parties.

The tax requirements for practitioners and buyers of their work will depend on whether or not each party has an ABN and/or is registered for the GST.

Selling Outright
Practitioner to final buyer
A practitioner may sell directly to a buyer, for example through a studio or website sale. If the practitioner is GST registered the sale price will include a GST component. The practitioner should issue a Tax Office compliant tax invoice or receipt for the sale.

Practitioner to Sales Intermediary
In this case, selling outright is defined as the situation where the practitioner sells their work to a gallery, agent, retail outlet or other business whose intention is to resell the work to a third party. The gallery, agent, retail outlet or other business pays the practitioner their asking (wholesale) price, adds their mark up and on-sells the work for the retail price.

In this situation, the gallery, agent, retail outlet or other business owns the work and the practitioner does not have a tax relationship with the end buyer.

If the practitioner is GST registered they will charge GST on the wholesale price of the work. If the gallery, agent, retail outlet or other business is also GST registered, they will charge GST on the retail price of the work. In both cases the GST component is collected and forwarded to the ATO, minus any input tax credits.

Selling on Consignment
In Australia the majority of sales of art and craft/design work is on a consignment basis. Selling on consignment is defined as the situation where the practitioner places their work with a sales outlet or other business to sell on behalf of the practitioner to a third party.

The practitioner continues to own the work up to the point where the third party, the buyer, pays for it. The sales outlet, or other business, will accept payment on the practitioner’s behalf, and will usually issue the Tax Invoice to the buyer.
When entering an agreement to put work on consignment with a sales outlet or other business the practitioner should be sure to clarify with them:

- the ABN and GST status of the practitioner.
- the ABN and GST status of the gallery, agent, retail outlet or other business.
- if both are GST registered, who will issue Tax Invoices to the buyer. Only one Tax Invoice can be issued per sale. If the sales outlet or other business issues the Tax Invoice, a copy should be forwarded to the practitioner in a timely manner.
- within what time frame income from sales will be forwarded.

Where the practitioner is GST registered, GST must be charged on the sale price of the art/craft/design work irrespective of the sales outlet’s or other business’s GST status.

Conversely, if the practitioner is not GST registered, then GST cannot be charged on the sale of the work, even if the sales outlet or other business is GST registered. GST will still be charged to the practitioner on the commission fee if the gallery is GST registered.

It should be noted that a number of different tax arrangements have been made by galleries, agents, retail outlets and other businesses involved in the sale of art and craft under Tax Office ‘private ruling’ provisions. Practitioners should be very clear about the practices of any businesses with which they deal.

**GST for Selling Art and Craft**

- Practitioners must supply the sales outlet with their ABN if they have one and advise the outlet whether or not they are registered for GST.
- Both sales outlets and practitioners should educate themselves about the implications of the tax system for their practice, and regularly update their knowledge by consulting with their relevant professional organisations, their tax adviser and the Australian Tax Office.
- The decision whether to register for an ABN and GST should be made by the practitioner and his/her tax adviser. The sales outlet may recommend—but should not insist on—GST registration.
- When entering an agreement where work is sold on consignment and both practitioner and sales outlet are ABN and GST registered, both parties should clarify which one will issue the Tax Invoice to the buyer. If the sales outlet wants to issue the Tax Invoice, then it should agree to provide the practitioner with a copy of the Tax Invoice in a timely manner.

**9.1.3 ABN and GST for Competitions, Prizes, Awards and Fundraising Exhibitions**

The GST is a significant factor to take into account for organisers, sponsors and practitioners involved in competitions, prizes, awards and fundraising events.

**GST for Organisers**

Organisers and sponsors of competitions, prizes, awards and fundraising exhibitions may be GST registered, however, it is probable that most small, community-based organisers won’t be. Those organisations that are GST registered are required to charge GST on all income earned, including:

- sponsorship, whether in cash or in kind
• government grants
• entry fees
• commission on sales.

They must be able to provide a Tax Invoice to the purchaser.

**GST for Sponsors**
Sponsors who provide goods or services (in cash or kind) to organisers in return for advertising and promotion of their businesses will need to pay the GST component of the advertising and promotion value received. It may be that the value of the good or service supplied by the sponsor (in cash or kind) is equal to the value of good or service received (promotion and advertising) in which case the value of the supply to each party will be the same. In effect no GST will be payable to the ATO by either party, but both should account for it on their BAS and provide each other with the appropriate Tax Invoice. Where, however, one party to the sponsorship arrangement is GST registered and the other is not, there will be an imbalance in the value of the sponsorship as the GST registered party will lose one-eleventh of the value without being able to claim an offsetting input tax credit.

**GST for Practitioners**
Practitioners who are GST registered should note that awards and prize money is income on which they will have to pay GST (unless special tax status has been obtained by the organiser eg for some scholarships).

If the organiser does not add GST to the prize income, eg the prize is $1,000 and the organiser agrees to pay $1,100 to a winner who is GST registered, then effectively a GST registered practitioner will receive a lower value prize than a practitioner who is not GST registered, because they must remit one eleventh of the $1,000 to the ATO.

**Getting and Providing Tax Invoices**
GST registered practitioners should obtain Tax Invoices from organisers for any payments, but particularly those over $75, for example, for entry fees and for commission on sales, and freight companies for freight costs so they can claim the GST as a business cost.

GST registered practitioners will also need to provide Tax Invoices to organisers and sponsors for the receipt of prize monies.

**ABN and GST and payment of prizes**
• If the practitioner has an ABN but is not GST registered, the prize payment can be made in full, but will not include a component for GST.
• If the practitioner has an ABN and is GST registered, the prize payment can be made in full, and where possible should include an increase for the GST component. The practitioner should provide the organiser with a Tax Invoice.
• If the practitioner does not have an ABN, the prize payment (without a GST component) can be made in full. The practitioner should provide the organiser with a declaration that the practitioner is not ‘in business’ (a “Statement by a Supplier: reason for not quoting an ABN”) otherwise the organiser will be required to withhold 46.5% from the payment.
• Organisers should advertise prize values as the GST-exclusive amount.
9.1.4 Income Tax

*Taxation Ruling: Carrying On Business As A Professional Artist (TR 2005/1)*

In this 2005 Ruling the Tax Office outlined the criteria for accepting that an artist is in business for tax purposes. You should make yourself familiar with the factors in that Ruling and make sure that you:

- register for an ABN and, if appropriate, as a GST business
- keep all Tax Invoices relating to expenditure for your business, including grants and residencies
- declare anything you sell to validate your claim as a professional
- emphasise your intention to earn an income
- establish the relevance of any arts related employment in your ongoing career path
- keep business records. Start with a cash book and record all of your income and expenses.
- keep all tax invoices, purchase a logbook for your vehicle and maintain a travel diary when you go on business related travel. You must separate your business and personal transactions.

**Assessable Income**

The income derived by practitioners who are in business or are employed is all assessable income for income tax purposes. This can include:

- sale of work
- grants, prizes, honorariums or sponsorships
- artist loan fees and fees for creating work
- paid employment or freelance consultancy services provided
- in-kind support such as free accommodation or studio space, equipment or materials, or other assistance.

If the practitioner is an employee, PAYG income tax deductions will be taken from their pay by their employer on a regular basis and forwarded to the ATO. This also applies to payments that are made under a contract that is principally for the labour of an individual.

If a practitioner is not an employee, it is likely that their income comes in a number of different forms from a wide variety of sources. These different kinds of payments may attract different rates of tax. For instance, an honorarium provided as part of a residency may attract the top rate of 46.5%, considerably eroding the immediately available funds for the residency. Per diems, in the form of Daily Travel Allowances (DTA) or Living Away From Home Allowances (LAFH) will be tax exempt in the hands of an employee but not if received as an independent contractor. If the practitioner is engaged as an independent contractor the DTA or LAFH will be received as part of their fee and offsetting travel/living expenses will be deductible. If the practitioner is also GST registered, then GST will be added to the DTA or LAFH.

If the practitioner is ‘in business’ or a freelance consultant (an ‘independent contractor’) and ABN and GST registered, income tax must be paid by the practitioner under the Pay as You Go (PAYG) system. This will be paid upon lodgement of your quarterly BAS.

Practitioners in receipt of social security payments such as unemployment benefits, disability allowances or pensions should investigate how the receipt of a short term allowance, grant or subsidy will affect their social security payments.
Practitioners in receipt of income, fees, honorariums, grants, prizes, sponsorship and all forms of in-kind support should clarify the tax status of the income in order to plan and manage their finances.

**Allowable Deductions**

As a part of expenditure incurred for the purpose of gaining and producing an assessable income, practitioners can claim deductions for the related cost of materials, equipment, tools, rent, freight, insurance, services (e.g., electricity, phone), advertising, documentation, and travel expenses, that is, all expenses necessarily incurred in carrying on the business. In some cases, such as participation in residencies interstate or overseas, living expenses may also be a legitimate deduction.

Practitioners should keep all invoices, documents or receipts, travel diaries and vehicle logbooks pertaining to their expenses for which they can claim an allowable deduction.

Sometimes practitioners are asked to donate works either as the result of a residency, or to a good cause for fundraising purposes. In these situations, practitioners should be aware that they can only claim the cost of materials, not the full value of the work, as a deduction.

The exception to this rule is where the work is donated to a public collecting institution under the Cultural Gifts program. Practitioners should seek further advice if they wish to avail themselves of the deductions (at market value) available under this program.

**Offsetting Losses from Art/Craft Practice Against Other Income**

The five criteria that allow art businesses to offset their losses against their other taxable income are:

- the amount of assessable income (gross, before expenses) from the business activity must be at least $20,000, or
- in three out of five years deductions must be less than income, and the loss is only deductible in the fourth and fifth years if the business income has been positive in the preceding three years, or
- the value of assets used to carry out the activity on a continuous basis must be at least $100,000, or
- the business’s interest in real property (studio, workshop, office but not private dwelling) must be at least $500,000, or
- the activity is a professional arts business, and the taxpayer’s assessable income (except for any net capital gain) from other sources unrelated to the taxpayer’s arts business is less than $40,000 per year.

This means that some practitioners are unable to meet the exemption criteria and cannot claim arts expenses against other income. In particular it places practitioners who work in related fields, such as teaching, in a difficult position. Often their teaching positions are dependent upon them continuing as practising art/craft/design practitioners, but the salaries they receive take them over the $40,000 limit, and they cannot meet any of the other criteria.
Representations continue to be made to the ATO regarding this anomaly. At present, the only option for practitioners who are in this position is to seek a private ruling from the ATO about their specific circumstances.

**Income (Tax) Averaging**

Practitioners are able to average the taxable income derived from their arts business. Income which is subject to the averaging provisions includes income from the sale of works, prizes, grants, royalties, artists’ fees and the like (but not income earned as an employee).

Income which is ‘averaged’ is taxed in full but at a rate that would be applicable had the income been earned over a five year period.

The lower threshold for this ‘Taxable Professional Income’ is $2,500 and practitioners should elect to have their arts income ‘averaged’ in the first year in which they exceed that threshold. Failure to make that election in the first year may jeopardise the opportunity to average the income at a later date.

**9.1.5 Income Tax for Residencies**

Practitioners undertaking residencies, particularly those that involve remuneration of some kind, should be aware of the tax implications involved in undertaking the residency as an employee or as an independent contractor. Any income derived from a residency, whether in cash or kind, in the form of prize money, use of premises, subsidised accommodation, provision of materials, a salary or a grant, is assessable.

If the resident is treated as an employee (as many are) for the duration of the residency, any payments made as salary or wages must be Pay as You Go (PAYG) taxed. This applies also to payments that are made under a contract that is principally for the labour of an individual (Arts Law Centre, 1996). Residency organisations/institutions providing remuneration in the form of wages that exceed $450 per month are also required to make superannuation contributions to a complying fund.

If the resident is not treated as an employee, but as an independent contractor, then their status as either ABN or GST registered (or not) may have a significant impact on available income. Independent contractors have PAYG income tax deductions of 46.5% withheld unless they have an ABN. This tax will be subsequently offset against any end of year tax liability, and any excess PAYG withholding will be refunded.

Prospective residents should be notified of the net, as well as the gross funds that will be available to them during the residency so they can budget for living expenses, materials etc. required for the residency. This information would also be valuable to the resident in terms of their management of other sources of income.

**Residencies and income tax**

- Residents should be made aware of the tax implications of the offered grant/subsidy/stipend prior to commencement of the residency, and negotiate employee versus independent contractor status.
- Residents who are employees and eligible for superannuation contributions should have the right to determine where their superannuation entitlements are directed.
9.1.6 Income Tax for Workshops
The tax implications for workshop teachers will depend on whether they have been offered a short term contract as an employee, or whether they have been provided with access to the facilities to run their workshop as an independent contractor. Most workshops treat the teacher as an employee, and income tax will be deducted under the PAYG system. The requirement to pay superannuation contributions will depend on the level of wages paid to the workshop teacher.

If the teacher is an independent contractor paid directly by their students, and is ABN and GST registered, the teacher will be responsible for paying their own income tax. If the course is not accredited, they will also have to charge GST on the supply of tuition.

Workshops and income tax
- Workshop teachers should be made aware of tax implications in relation to fees collected, income and expenses, and should negotiate employee versus independent contractor status.
- Workshop teachers who are employees and eligible for superannuation contributions should have the right to determine where their superannuation entitlements are directed.

9.2 INSURANCE
9.2.1 Introduction
Arts professionals, whether they are self-employed, sub-contractors or in business with or without employees, are becoming increasingly aware that insurance impacts on all areas of their professional activities. Many practitioners, independent curators, consultants, art historians, and writers are inadequately insured for all the risks they face in both the areas of general property and liability insurance. The public and commercial galleries, agents, and retail outlets with which they deal may agree to cover some of the practitioner’s risks, for example, when works are on exhibition or on consignment, but there are often limitations on such cover. These galleries, agents and retail outlets also have insurance requirements of their own to fulfil.

Practitioners who are employed full or part-time in educational or other public institutions or private enterprises benefit from the statutory requirements of work cover insurance at their place of employment. But if they also work independently from their own home studio or other premises they will need their own separate insurance cover for the activities they undertake as a private individual or as the proprietor of a small business enterprise.

The high cost of insurance premiums is a deterrent to many practitioners. Their difficulties are compounded by the complexities of insurance terminology and unfamiliarity in negotiating common sense levels of risk with insurance brokers or agents who may not have practical knowledge of the arts sector.

One of the core problems facing insurance brokers and underwriters is that the level of risk in relation to practitioners is ill-defined and imprecise. Being an ‘artist’ covers a range of skills and professions, levels and frequency of income and value of work. Many self-employed practitioners have low and fluctuating incomes. Apart from finding it difficult to afford insurance, they may not qualify for certain types of insurance, such as income protection, as they cannot demonstrate a regular income.
over two years. Because of these difficulties, it may be best to seek the services of a broker with knowledge of the arts sector.

Similarly, the high cost of insurance premiums, and the practical difficulties of separately identifying works on temporary exhibition and/or stock for sale (that changes daily or monthly), is a deterrent to galleries, retail outlets and other users of practitioner’s work. The consequence is that many galleries and retail outlets are not fully insured for all risks.

Insurance premiums might also be reduced by having risk management strategies in place. Risk management strategies should also be put in place where insurance is not available or not required.

While there are a few art/craft oriented policies in existence, and some professional organisations in the sector have been able to negotiate tailored policies to meet the needs of members or associates, adequate and affordable insurance in the sector remains a major challenge.

NAVA operates an insurance scheme for artists as part of the Premium Plus Membership Package.

(Laws on a number of matters impacting on insurance, civil liability and workers compensation can vary between states and territories, and laws do change with some frequency. It is best to seek legal advice on specific issues.)

9.2.2 Types of Insurance
The following describes the various types of insurance coverage relevant to art/craft/design practitioners and users of their work.

**Workers’ Compensation**
Practitioners who are employed will be covered by the compulsory workers’ compensation cover and public liability insurances held by their employers while they are at their work place, engaged on legitimate activities associated with their employment, or during necessary travel to and from or on behalf of the place of employment. This applies to practitioners, tutors, technicians, administrative staff or others employed in any capacity by an individual, an enterprise or an association. Unlike workers compensation insurance, volunteer workers insurance is not legally required to be taken out by organisations. Therefore, volunteers should ask the organisation if they will be covered by volunteers insurance.

**Personal Accident and Illness (Income Protection)**
Provides for loss of income for self-employed persons resulting from either accident or illness. It covers the payment of (either or both) a capital sum and a weekly benefit payable up to the maximum stated period set out in the policy. This type of policy usually only applies to income made from personal exertion, not from pensions. The weekly benefit may be calculated at a percentage (eg. 85%) of the insured person’s gross taxable earnings averaged over the past twelve months.

**Public Liability**
Individuals and groups have a duty of care towards members of the public observing or participating in activities. Public Liability insurance covers "Acts of Negligence" and liability for death, bodily injury or property damage/loss caused by yourself, your
group or your employees failing to act with ‘reasonable care’. It also covers legal liability as owners or tenants of premises for bodily injury caused as a result of the state of the building or its surrounds and liability for injury, sickness or death caused by products you sell or supply. Public Liability insurance is now compulsory for contractors and consultants in many professions and trades, and more demands are being made on practitioners to protect themselves against negligence with this type of cover, either separately or in association with other types of insurance. Note that incorporated associations in NSW and ACT are no longer required by law to maintain public liability insurance as a condition precedent of being an incorporated association. There are also now insurance schemes in each state and territory for community groups (not individuals). Our community.com.au is a website providing links to insurance companies that cover community groups. As well it provides a number of risk management checklists to assist in the identification and management of risk.

**Product Liability**

This covers legal liability towards members of the public for an "Act of Negligence" in the manufacture of work leading to injury, sickness or death from products sold or supplied. It may not cover any fault in the actual design of the product. Each state and territory has its own laws with respect to time limitations for bringing a legal action. Actions can be bought as a tort (or in contract), in common law (in NSW the Limitation Act 1969, section 13 provides a time limit for bringing an action in tort as six years from when the action first accrued), or under the Trade Practices Act (commonwealth law applying to goods not of merchantable quality). Other laws include, for example, the NSW Sale of Goods Act. Unless there is a current policy in force at the time that a claim is made or occurred it is possible that the artist/craft practitioner will not be protected. Even if the artist/craft practitioner has no other insurance cover, they may find that Public and Product Liability is compulsory when they are engaged as independent consultants or contractors on public art works or other major commissions.

**Home Studio**

This type of General Property Policy is largely similar to the Home and Contents generally available to domestic consumers. However, in addition to the normal activities in a residential dwelling, the necessity for special cover envisages the common situation where the practitioner has a dedicated space (room, garage, shed) within or on the site of their residential premises where they create, market, store and pack their art/craft/design. Tools, materials, documents and office equipment as well as work in progress and finished works on the premises should be covered against theft or damage.

**Inland Goods in Transit**

This policy is desirable where comprehensive cover (theft, breakage, damage, guaranteed ‘floor to floor’ delivery) is required for art/craft/design works in transit by any form of freight or transport within Australia. This definitively covers the ‘grey area’ of exactly whose responsibility it is for works in transit and should be considered for valuable consignments.

**Tenants Liability**

This is usually an extension to a Public Liability Policy protecting tenants against claims for any damage negligently caused to any property being rented.
**General Property**
This policy provides protection of private or commercial premises against loss or damage caused by burglary and other specified perils. It includes repairs, reinstatement or replacement to buildings contents and stock and may also specify money on premises, damage to plate glass and property owner’s liability.

**Goods in Physical and Legal Control**
This protects you against claims arising from other people’s goods in your control or on your premises that you negligently lose or damage. This is suitable for galleries, shops or any exhibition space or storage where you have other people’s art/craft/design works on consignment or in your care and control.

**Professional Indemnity**
This facility provides cover for the breach of a professional obligation or advice given on a professional basis. Professional Indemnity insurance provides for loss resulting from claims made against the insured for breaching their professional duty. It may also be extended to include loss of documents, libel and slander, breaches of the Trade Practices Act, and breach of copyright. Claims can be made for a number of years after the work has been completed and unless there is a current policy in force at the time that a claim is made, it is possible that the practitioner will not be protected.

**Volunteer Personal Accident**
This covers accidental death or permanent/temporary disablement of a person while engaged in voluntary work on behalf of your group, i.e. any arts association/council meeting or activity.

**Directors/Office Bearers Liability**
Directors/office Bearers can be personally liable for what they do or fail to do while acting in their capacity as directors or office bearers. That personal liability could cause them to lose all or part of their own assets. Directors/Office Bearers Liability is to protect the personal assets of directors and office bearers from managerial liability and legal expenses incurred in defending claims against them.

**Employment Practices Liability**
Provides coverage for claims by any past, present or prospective Office Bearers or Committee members of the Association for employment-related claims, for example wrongful or unfair dismissal, failure to employ or promote, termination, harassment, breach of employment contract, misleading advertising regarding employment.

**9.2.3 Public Sector Exhibitions Insurance**
Public galleries have a duty of care and are responsible for taking out insurances for works in their care, custody and control and ensuring that these cover any repair costs. Public galleries are also responsible for public liability insurance for practitioners installing work on site and for the health and safety of those who work near or are viewing the work.

**Public sector exhibitions insurance**
- Public galleries should carry an insurance policy that comprehensively protects works in their care, custody and control both in the gallery and in transit.
• It should be noted that some galleries carry limited insurance due to the high cost of premiums. While undesirable, if this is the case, the gallery should inform the practitioner of any risk.
• The gallery should insure the works both in the gallery and in transit.
• The gallery should take full responsibility for the health and safety of those who work near or are viewing the work.
• The gallery should take full responsibility for public liability and for insuring the artist/craft practitioner while he/she is creating and installing the work on-site.

Insurance for work bought outright
• Insurance for the work in transit to the gallery/retail outlet needs to be negotiated and agreed. Once received, the work is the gallery’s/retail outlet’s responsibility to insure.
• To cover circumstances where work is damaged in freight to the gallery/retail outlet, it is important that the contract or agreement contain a clause of acceptance ‘subject to inspection’ within a specified number of days and another clause which specifies the artist/craft practitioner be notified immediately in such circumstances. The contract or agreement should also specify which party should, through their insurance policy, cover repair costs.

9.2.4 Public Art Insurance
It is important to clarify who is responsible for insuring the public art work if it is being fabricated on site, who is responsible for receipt of materials on site and for their safe storage, and who is responsible during the work’s installation.

Practitioners need to look carefully at the insurance requirements outlined in the commission contract or agreement before signing it. If professional indemnity insurance is required, practitioners may face difficulty in obtaining it because insurance agencies may be unable or unwilling to assess the relevant risk. Practitioners may also find it inordinately time-consuming to organise all of the insurance for the public art project themselves if they lack the experience and infrastructural support for the task.

There may be a disjunction between the indemnities required of practitioners and the protection given to the art/craft/design work once installed in its location. Practitioners might be asked to guarantee the materials used in the public art work and the quality of workmanship for a significant period of time, while the obligations of the commissioner/owner of the work extend for a much shorter period. This is in contrast to trades people and builders who only indemnify for one year after completion of the project.

In practice options are:
• the practitioner is asked to indemnify the commissioner against defects for a specified period or for the life of the work and/or take out professional indemnity insurance.
• the obligation is shifted to a conservator who certifies that the work and materials are appropriate for the site/work and thus assumes the risk under their own professional indemnity obligations.
• the practitioner is not required to take out professional indemnity insurance - the commissioner bears the risk.
Public Art insurance responsibilities

- The responsibility for insurance should be undertaken by the party in the best position to control and manage the risk, and best able to secure the insurance cover at a reasonable premium.
- Commissioners should recognise the economic constraints under which many practitioners work, and should not seek to shift their responsibilities onto practitioners who may not be able to afford or obtain adequate insurance against the relevant risks.
- If the practitioner is to be responsible for insuring against certain risks associated with a commissioning project, the cost of insurance should be included in the commissioning budget.
- Whether an insurance policy is taken out by a commissioner or practitioner, both should be covered by the policy.

Workers’ compensation

- A practitioner who is an independent contractor should be responsible for taking out workers’ compensation insurance to cover themselves and anyone the practitioner employs directly to work on the commission, both on and off site.
- The cost of such insurance should be included as an item in the commission budget.

Property care, custody and control

- Where fabrication occurs in the practitioner’s workshop or studio, the practitioner should be responsible for taking out appropriate insurance. The costs of the insurance for this purpose should be included as an item in the commission budget.
- Where fabrication is on-site, or on premises owned or occupied by the commissioner, the commissioner should be responsible for insuring the work, materials and associated costs.
- The cost of insuring the public art work while in transit from the practitioner’s premises to the site should be included as an item in the commission budget.

Public liability

- Where fabrication of the work occurs off-site, the practitioner should be responsible for taking out public liability insurance. The cost of this insurance should be included as an item in the commission budget.
- Where fabrication of the work occurs on-site, the commissioner should be responsible for public liability insurance and associated costs.

Professional indemnity

- Commissioners should recognise that this type of insurance is not readily available to practitioners and is often therefore prohibitively expensive. If professional indemnity insurance is required, the cost should be included as an item in the commission budget.

9.2.5 Insurance for Residencies

Insurance conditions differ across residencies depending on their type.

Residents (and workshop teachers) who are employees under the terms of their residency must be covered by the host organisation’s workers’ compensation insurance. Where the resident is not an employee, the resident may need to arrange
his or her own personal accident insurance unless this is covered by the organisation's public liability insurance.

Workers' compensation legislation does contain some provisions that extend the concept of common law employee to independent contractors, 'so that persons who would otherwise be independent contractors will in certain circumstances be workers for the purpose of the legislation and accordingly entitled to benefits.' Summary Report on the Professional and Industrial Representation of Visual Artists and Craftpersons, 1995, p.21

**Residencies and insurance**

- The resident should be made aware of their insurance status and where liability rests in regard to public liability, personal injury/accident, theft or damage to art/craft works, freight of works and personal travel.
- If the residency requires the resident to take out their own contents insurance against theft or damage to personal effects, including tools, materials and works of art or craft, the resident should be advised well in advance of undertaking the residency.
- The resident may be able to transfer an existing policy if security arrangements are similar. In order to do so, the resident should be informed of the security arrangements in the building—that is, the presence and type of alarms, deadlocks etc.
- If interstate or long distance travel is involved, residents should take out insurance coverage for personal travel and for the transit of works of art or craft.
- Public liability insurance should be covered by the host organisation or institution.

**9.2.6 Insurance for Workshops**

It is the host organisation's responsibility to have public liability insurance cover for any buildings in which workshops are held, and which are used by the public. Teachers who are employees should be covered by the host organisation's workers’ compensation insurance.

Teachers who are not employees may need to investigate the insurance policy of the host organisation/institution and determine whether the institution's general public liability insurance covers them for accident or damage.

In addition, the insurance status of students under a teacher's care needs to be clearly identified. The question of who is liable in the event of a student being injured during a workshop needs to be answered before the commencement of employment.

**Workshops insurance**

- The teacher should be made aware of whether they are covered by the host institution’s insurance policies in relation to public liability and workers’ compensation prior to commencement of the workshop.
- The teacher should be made aware of where liability rests in regard to personal injury/accident of students under their care.

**9.2.7 Insurance for Competitions, Prizes, Awards and Fundraising Exhibitions**

Organisers should recognise that they have a duty of care in storing, handling and displaying art/craft/design works and back this up with the relevant insurance
policies. There are a growing number of organisers who are taking the responsibility to ensure that insurance coverage (sometimes limited) is available for works on exhibition and sale. Some of the solutions have been:

- a component of the entry fees is used to purchase an insurance policy to cover art/craft/design works during the event
- existing venue insurance is extended to suit the requirements of the event, with various levels of excess to be paid by practitioners for each claim.
- optional limited coverage is arranged through an insurance broker and offered at low cost to the participants.

The following is an example of a clause concerning insurance which unfairly places the burden of risk and cost on the practitioner:

“Any damage to or loss of any exhibit, however and whenever occurring and whether whilst in transit, on display, in storage or otherwise, shall be the sole responsibility of the exhibitor. The organiser will take every care with exhibits but does not accept any responsibility for any such damage or loss and advises exhibitors to insure exhibits against such damage or loss”.

Usually, practitioners are responsible for insuring their work in transit both to and from the event. The practitioner is in the best position to determine the type of policy and the level of cover to buy. Practitioners should be aware that some policies exclude coverage for particular types of materials (especially glass and ceramics) so the details of any policy should be read carefully.

**Competitions insurance**

- Organisers should ensure that works are covered by an insurance policy whilst in the organiser’s care, including storage, handling and display.
- If applicable, the Entry Form should clearly state that transit insurance coverage is the responsibility of the practitioner. However, where the work goes on tour, both venue and transit insurance should be carried by the organiser.

**9.2.8 Insurance Advice and Assistance**

NAVA offers an insurance scheme for professional sole traders who are:

- Artistic practitioners
- Crafts people
- Installers
- Curators
- Registrars
- Conservators
- Art Administrators

The National Insurance Brokers Association (NIBA) in Sydney and Melbourne can also provide names and contact details.

**9.3 OCCUPATIONAL HEALTH AND SAFETY**

Over the last fifty years, public awareness of Occupational Health and Safety (OH&S) has increased significantly, and all Australian Commonwealth and State governments have enacted legislation relating to OH&S. Despite this, many people, including many practitioners themselves, still think of visual arts/craft/design practice as posing minimal risks of injury and disease. The truth is very much the reverse. Almost all of
the wide range of visual arts media involve substantial risks of serious injury or illness. Risk factors may include:

- substances such as clays, spray adhesives, waxes, solders, paints, photographic chemicals, glazes, acids and the like
- environmental conditions of work, such as ventilation and air temperature, floor surfaces and lighting
- physical conditions of individual work, for example poor posture or workspace layout may lead to strains and musculo-skeletal problems.

It is vital that all practitioners familiarise themselves with their rights and responsibilities in relation to Occupational Health and Safety. Section 8.3.1 below provides an overview of the legal protections which practitioners are owed in various working situations, together with the obligations which they owe to protect others. The NAVA web site at visualarts.net.au has links to a great deal of valuable information about OH&S for practitioners. These links are a good source of information about risks and prevention in a variety of art/craft/design forms. More detail about the information on the NAVA site is given at section 8.3.4 below.

9.3.1 Occupational Health and Safety Law

The focus of Occupational Health and Safety law is on legal strategies for the prevention of workplace injury and disease. Under Australian OH&S legislation, employers, the principals of independent contractors, the contractors, employees, owners of workplaces and manufacturers of plant and substances for use at work have a statutory obligation to ensure, as far as reasonably practicable, that the conduct of their enterprise or their work will not create a risk to the health and safety of other persons present at the workplace. The OH&S legislation mandates a general standard of care in workplaces and work processes. The protection of practitioners under occupational health and safety legislation is determined by the existence or not of a work relationship.

It is possible to divide practitioners into a number of categories as regards their work relationship. These categories are not determined by the art medium, but by contractual issues. Effectively, there are three relevant categories, set out below. In each category, practitioners are both owed protection, and have obligations of protection to others. The nature and extent of these protections depends on the type of work relationship.

Practitioners as Employees

This category includes teachers in art schools, conservators employed by galleries, community arts workers employed by local government or arts administrators.

Where practitioners work as employees, the employing body will owe obligations of care to them as their employer. That obligation will incorporate protection from all risks relating to the art/craft/design medium involved, as well as to a host of other matters which may arise from working on the premises. For example, there will be an obligation to ensure the premises are structurally sound, that the temperature and freshness of the air do not endanger health, that the entrances and exits are properly lighted to protect against falls. There will be obligations to ensure security from assaults by students or intruders. There will be obligations to ensure that the working hours do not impact on health and that the pressure of work does not create undue stress.
Employees Occupational Health and Safety
- Practitioners who are employees have the same obligation under occupational health and safety legislation as any other employees—not to create risks to the health and safety of anyone by their conduct at work.
- Such obligation would thus be owed to other persons working at the art schools or galleries, to the students of the schools, to visitors and even to trespassers.

Practitioners as Independent Contractors
This category would include persons engaged to create commissioned works in the public and private sectors, or to create art works as part of larger projects, for example, someone engaged to paint murals or carve friezes in the foyers of public buildings.

The project managers’ responsibilities here will be limited by the implications of ‘reasonable practicability’. For example, it would be reasonably practicable to insist that the practitioner wears a hard hat in a hard hat area, but not reasonably practicable to control the choice of paints, solvents, glazes or whatever, the dangers of those being matters within the practitioners’ particular knowledge.

Contractors Occupational Health and Safety
- Where practitioners are working as independent contractors on projects, the project managers will have obligations to ensure that the premises, the construction work, and the activities of others employed or engaged on the project do not endanger the health and safety of the practitioners.

Practitioners working on projects under independent contractors would have obligations to all workers and visitors on the project premises—not to create risks to the health and safety of anyone by their conduct at work.

Practitioners without Legal Work Relationships of Any Kind
Legal work relationships are about performing work, not about the thing produced by work. In the performing of the work of producing a painting, sculpture etc, the individual practitioner is not in a legal relationship with the ‘end-user’ of the work. For example, the individual practitioner creates an art/craft/design work in his/her studio. He/she then sells the work, either directly or through an agency or commercial gallery. The legal relationship involved is one of sale. The practitioner is not an employee nor an independent contractor, but a vendor.

Where the practitioner works as an individual in his/her own studio, the occupational health and safety legislation places no obligations in relation to the practitioner’s health and safety on those for whom they are doing the work, because they do not work ‘for’ anybody. The legislation places no obligations on those with whom they work, because they do not work with anybody. However, the obligations of manufacturers of plant and substances for use at work will apply where practitioners use them in their work. The manufacturers’ obligations relate simply to ‘use at work’, whether that work is done within a work relationship or not.

The position of the self-employed (which includes the individual practitioner) under occupational health and safety legislation creates a form of statutory occupier’s liability. Occupation of a workplace results in statutory obligations of care to anyone who enters the workplace.
Artists’ Co-operatives
The co-operative arrangement might lead to the categorisation of the artist members as employees of the co-operative, so the penalties for breach of occupational health and safety legislation vary among jurisdictions, but in all cases they are potentially significant. Artists’ co-operatives would seldom be particularly wealthy, and this possible liability would need to be taken into account.

Co-op Occupational Health and Safety
- Practitioners owe obligations to anyone present in their workplace/studio—to ensure that the conduct of their work, the substances with which they work and the premises in which they work do not create risks to health and safety.
- Where individual practitioners work in shared studio accommodation, each such practitioner would owe these obligations of care to the others sharing with them.
- Where practitioners operate as an ‘artists’ co-operative’, the co-operative as a whole would have obligations of care to each member, whether or not the other members were personally involved in the creation of risk.
- When a practitioner is an employer of, for example, another practitioner as an assistant, then he or she has the same occupational health and safety obligations to his/her employees as any of the employers referred to in this part of the Code.

9.3.2 Education and Awareness
All practitioners need to exercise care and to be aware of risks. Given the absence of legal protections available for practitioners not in a legal work relationship it is especially important that this group be vigilant about OH&S in their art/art/craft/design practices. They should endeavour to keep themselves fully informed about health and safety issues in their work place.

Occupational Health and Safety Education
- Practitioners should take all necessary precautions and they should keep themselves informed about potential hazards involving practices, equipment and substances used in making art and craft.
- Arts education institutions should ensure that the teaching of occupational health and safety issues is of a high standard, and that their curricula are updated regularly.

9.3.3 Residencies and Workshops
The safety and wellbeing of those who participate in residencies and workshops is essential and those responsible have a duty of care to ensure that OH&S standards are adhered to. All participating practitioners need to be aware of OH&S issues, whether or not they are employees.

Residencies and workshops Occupational Health and Safety
- Residents and teachers should be fully briefed on OH&S issues relating to the residency or workshop workplace or environment.
- All institutions and organisations conducting residencies or workshops should be observant of OH&S principles and act accordingly with due diligence.
- Practitioners undertaking residencies or workshops should:
  - be properly trained in the operation of machinery and equipment
  - have access to protective clothing such as masks, ear muffs, goggles, gloves
- be made aware of the location of first aid stations, emergency exits, fire evacuation procedures and fire extinguishers
- be obliged to agree, under the terms of their contract or agreement, to proper observance of OH&S issues, including the care and disposal of flammable or toxic chemicals or materials, blockage of passageways and exits with art/craft/design works or materials and a duty to comply with safety procedures.
- Residency and workshop contracts and agreements should stipulate compliance with the observance of OH&S principles.

9.3.4 Advice and Assistance
The details involved in fulfilling the general responsibilities of care vary from state to state, depending on legislation. There are specific requirements concerning reporting of accidents and incidents in the legislation of all states, and in addition NSW legislation mandates the establishment of on-going systems of risk identification, assessment and minimisation. For more information of these detailed requirements, contact the relevant state authorities.

The information in this Code is not intended as legal advice. Users are advised to seek independent legal advice in relation to their specific circumstances.

For issues not covered by law, the Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector presents a set of best practice standards for the industry which can be used as the basis for negotiation between practitioners and those with whom they deal professionally.

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