

Introduction

The Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector is the national best practice standards for the sector. The Code provides a set of practice and ethical guidelines for the conduct of business between art/craft/design practitioners and galleries, agents, dealers, retailers, buyers, sponsors and partners, commissioners, employers and managers of residencies, workshops, awards, prizes and competitions.

For issues not covered by law the Code presents a set of best practice standards for the industry which can be used as the basis of negotiation between practitioners and those with whom they deal professionally. The Code is an essential professional tool for the negotiation of contracts and agreements, terms and conditions, and the explanation of the business protocols and procedures of the visual arts, craft and design sector.

The principles outlined in the Code are voluntary, not mandatory, except in the case of copyright, moral rights, taxation and equal opportunity that are covered by legislation. This is reflected in the Code's language, 'should' is used in place of 'must' with the above exceptions. The information in the Code is not intended as legal advice, users are advised to seek independent legal advice in relation to their specific circumstances.

Chapter 1: Commercial Galleries – Exhibiting, Selling and Collecting Art, Craft & Design

1.1 Commercial galleries and retail outlets

1.1.1 Full gallery representation

A successful relationship between a practitioner and a commercial gallery is mutually beneficial. The primary role of practitioners is to be creators of original works of art. Forging a relationship with a gallery enables practitioners to gain expert assistance to develop their professional reputation, reach their audience and have their work purchased or commissioned.

This can best be achieved through full gallery representation, where the commercial gallery actively manages the practitioner's career development in the expectation of a long-term relationship with the practitioner.

It should be noted that the most common selling arrangement between visual practitioners and their representing galleries is that of consignment, where the gallery is not the owner of the work that is selling but sells the work as the agent of the practitioner.

In many instances the relationship between the practitioner and the commercial gallery does not fall under the concept of full gallery representation, for example the gallery may be offering a more limited relationship or range of services to the practitioner. This may be preferable for the practitioner and/or gallery and may be a prelude to full gallery representation or not.

It is strongly recommended that all galleries and practitioners negotiate and confirm **in writing** the nature and terms of the agreement that they have. Practitioners may be reluctant to insist on written agreements if not provided or offered by the gallery. Creating an agreement or documented written correspondence of decisions makes clear the terms of the relationship and can avoid misunderstandings which can lead to a dispute in the future.

Contracts and agreements

- The agreement should list the expectations of both parties. To provide reasonable certainty, the commercial terms of the relationship should be confirmed in writing, whether by a letter of agreement or a formal contract. If there is to be any change to these terms, the practitioner and the gallery should discuss, agree and document it in writing as a variation to the agreement.

Consignment

- When delivering works to the gallery, the practitioner should supply the gallery with a full descriptive list of works, including a description of the condition of the works. The gallery should check with consignment list against the works delivered to the gallery. The gallery should sign it and return a copy to the practitioner as a receipt. If the practitioner does not prepare the consignment list described above, it should be prepared by the gallery promptly upon taking possession of the works and signed copy provided to the practitioner.

Duration of relationship

- Full representation relationships are generally expected to be long-term. If negotiated for a fixed period this should be agreed in writing between the practitioner and the gallery. The professional relationship can be terminated by either party giving reasonable notice. The gallery and practitioner should jointly agree on what constitutes reasonable notice in the circumstances. This should be agreed in advance and form part of the contract.
- The parties should assess their commercial relationship from time to time. This assessment should take place at least as regularly as when the results of each exhibition are reviewed.

Services to the practitioner

While the principal service performed by the gallery is selling the practitioner's work – so that both the practitioner and the gallery earn a living through the sale of art – full gallery representation usually includes the services listed below. The value of these services, and the basis for commission in full representation, lies in their **ongoing** nature. This is intended to be an indicator of the core services a gallery providing full gallery representation may offer; it is not exhaustive. A gallery should be providing the below services to consider the relationship full representation and to negotiate for commission on all sales of a practitioner's work including commissions, prizes and awards.

- Staging regular in-house exhibitions, producing catalogues and invitations
- Archive and curriculum vitae maintenance
- Maintaining visual material for promotional purposes
- Media archive maintenance/records of promotional activities/post show summaries of media outcomes and promotional material
- Pursuing ongoing sales and exhibition opportunities outside the gallery in the public and private sector (e.g. in museums, public galleries, festivals, survey shows, biennales)
- Pursuing commissioning opportunities and advocating for the practitioner's interests
- Cultivating collectors and corporate clients
- Monitoring the practitioner's interests and legal rights
- Collaborating with the practitioner on competition, grant and commission submissions
- Pursuing critical writing and publishing opportunities for the practitioner
- Recording of all works left on consignment, location of all works sold and on loan

Frequency of shows

- The gallery and practitioner should jointly agree on the frequency of exhibitions. A practitioner fully represented by a gallery should expect an exhibition at least once every two years unless a different timeframe is negotiated.

Territory of representation

- The gallery and the practitioner should jointly determine the area of representation: regional, state wide, national or international. The gallery should not insist upon a sphere of representation that exceeds its true territory of operations. The gallery should be prepared to substantiate any claim for exclusivity beyond its city/state location.
- Terms of exclusivity should be negotiated between the practitioner and gallery and clarified in the contract or agreement. This includes duration, geography and representation relationships with other galleries, partner galleries, consultants etc.

Pricing

- The practitioner and the gallery should jointly agree upon the retail price of the artwork. All prices quoted by the gallery should be inclusive of GST.

Gallery commission

- The partnership between the gallery and the practitioner establishes commission as payment by the practitioner for the gallery's intensive ongoing work and representation in the development of the practitioner's career, reputation and livelihood. As such it should be recognised as an agent's fee, earned by the gallery in return for the type of ongoing services listed above.

Terms

- The gallery and the practitioner should jointly negotiate the appropriate amount of commission paid to the gallery based on the level of service supplied by the gallery. Commission for full representation should not usually exceed 40 percent of the GST exclusive retail price of the artwork.
- The gallery and practitioner should jointly agree on the rate of commission to be paid on different types of transactions. For example, sales made direct from the studio, acquisitive prizes and awards received by the practitioner, and commission fees for projects. Rates may be between 10 and 30 percent. On the sale of artworks with high manufacture costs, for example sculpture, the commission is calculated after reasonable intrinsic costs such as additional labour or out of studio foundry and fabrication expenses are refunded to the practitioner in full.
- The practitioner should discuss with the gallery any changes to ordinary commission arrangements prior to the relevant event including any interstate gallery representation.
- Occasionally galleries and purchasers refuse to deal with each other, resulting in the practitioner being pressured to bypass the gallery to retain the sale. When this occurs, the gallery is nevertheless entitled to expect its full commission.
- Where other agencies or galleries has been involved in the sale of the work, the total commission should remain the same. By prior agreement the total commission should be split between the managing parties, so the practitioner receives their full share of the retail value. For example, where a practitioner sells work through exhibiting as a finalist in an art prize, and the prize organiser charges 20 percent commission, the two managing parties would receive an agreed share of the 20 percent and the practitioner would receive the remaining 80 percent.

Donations

- Should a practitioner wish to provide a work for a fundraising event the gallery and the practitioner should come to agreement about the gifting of pricing and commission arrangements.
- The gallery and practitioner should jointly agree on a reserve price for the retail value of the work to ensure that the value of the practitioner's work is not undermined.
- The gallery should respect any longstanding arrangements practitioners may have with fundraising events and the practitioner should ensure the gallery is informed about these at the start of their relationship.
- Asking galleries to forgo commission is in effect a request for donation of a percentage of an earned fee. It cannot be assumed that a gallery is always going to be able to donate in this way, but when it does the donation should be acknowledged on a par with other project contributions.

Commissioning of an artwork

- Due to the practitioner's greater involvement with the client on commissioned portraits, site specific artwork etc. a lower than standard gallery commission rate may apply. This rate and the roles and responsibilities of all the parties involved (i.e. documentation, supervision, insurance cover, client liaison, transport, framing and installation costs) should be negotiated prior to commencement of the project. Gallery commission paid on project commissions should be based on the practitioner's profit, not the full value of the commission.

Payment and sales

- The sale should be evidenced in writing. It should include all terms of the sale.
- Payment to the practitioner should occur within 30 days of the sale or payment being received by the gallery, whichever is sooner.
- Except where the sale is to a public institution, a minimum deposit of 25 percent for works under \$1,000 and 10 to 15 percent for more expensive works should be paid by the client to hold the work for purchase. The holding period should be limited to 30 days. If the sale does not proceed, the deposit should be forfeited by the gallery's client, and the pro rata standard gallery commission should be deducted from the deposit amount with the practitioner receiving the balance of the deposit.
- The gallery should obtain the approval of the practitioner before proceeding with payment by instalments. Maximum time for the instalment payments to be completely paid off should be three months. Instalment payments should be made in regular stages (for example 30-30-40 percent) with commission paid on each instalment. The practitioner should receive each instalment payment within 30 days of the payment being received by the gallery. If the instalment sale is not completed within 90 days, the gallery should pay the practitioner the full retail price less the relevant commission.
- Credit extended should be entirely at the gallery's own risk. The gallery and the practitioner should jointly agree whether or not written notice is required before the gallery extends credit to the purchaser.
- On request the gallery should keep the practitioner apprised of the progress of purchases, what is on reserve, and any instalment payments due or received.
- The gallery should provide a statement of account to the practitioner every 90 days and on request verbally. This accounting should include a list of sales during the period, the sale price, commission payable, and details of all expenses payable by the practitioner, and should be accompanied by the payment of any amounts owing to the practitioner.
- The gallery should provide the practitioner with details of purchasers on request. It is a breach of the representation relationship for the practitioner to use this information to seek direct sales without the payment of commission.
- It is recommended that the proceeds of a sale, minus the gallery's commission should be lodged in an account separate from the gallery's funds. Payments to the practitioner should be disbursed from this account. The funds in the account should not be used for any other purpose. If the gallery does not maintain separate accounts, it must disclose this in writing to its practitioners.
- The gallery may agree to 'reserve' a work for a client and undertake to call that client before selling to someone else. This is distinct from holding a work against a commitment to buy. In the case of public institutions or trusted clients, a work may be reserved for an agreed period until approval is secured from a Board of Trustees or a client's partner.

Discounts

- The gallery has an obligation to the practitioner to represent the work as fully as possible and to the best advantage and not to undermine the value of the work. Selling as a discount is discouraged. If a gallery does give discounts, it should have a policy on discounting which should be clearly understood and agreed to in writing by all parties.

Prizes and awards

- The gallery should send on any information it receives regarding prizes, art awards or acquisitive exhibitions that it considers of interest to its practitioners.
- The practitioner should notify the gallery of their interest in entering prizes, awards or acquisitive exhibitions after receiving entry forms directly from any institution. In such cases the practitioner should ensure that the gallery will be credited in documentation, catalogues, wall labels and opening speeches. Where the gallery has donated commission to the event it should be acknowledged on a par with donors of an equivalent cash value.
- The terms of participation and commission rates for these events should be based on discussion and agreement between the practitioner, the gallery and the host organisation. The practitioner and gallery should jointly agree on an approach to prizes where the host is seeking to charge a secondary rate of commission that will impact on the prior agreement on commission between practitioner and gallery, insisting on all works selected being for sale.
- Generally, if the value of an acquired work is less than the value of the prize, where gallery commission applies, it should be calculated only on the value of the work. In the case where the practitioner is judged to be the recipient of the non-acquisitive award or prize.
- Where works entered in a prize are sold to a private buyer or host organisation, they are subject to the rate of commission negotiated between practitioner and gallery.

Record keeping

- At the end of each financial year the gallery should undertake a stocktake and send to each practitioner a list of their works held on consignment, a list of sales made throughout the year, and make payment of any amounts owing to the practitioner. Individual stocktake statements should be issued more frequently for practitioners with a substantial turnover of stock.

Exhibition arrangements and costs

- Costs borne by the practitioner or gallery can vary greatly. The rate of commission should be adjusted accordingly to reflect the costs devolved to the practitioner.
- The gallery and the practitioner should agree in advance on who will pay for what exhibition costs (for example, transport, promotion, documentation, framing, printing, postage, food and drink, advertising). It is common practice for the practitioner to be charged for the cost of transport to the gallery and the gallery to pay for any return transport costs.
- The gallery should make clear the nature of the exhibition (solo or group show) and costs should be allocated accordingly in a fair and equitable manner.
- The party that pays for any photographic documentation should own that material. This refers only to the ownership of the documentation material itself and not the copyright embodied in it. Prior to use these images should be selected and/or approved by both the practitioner and the gallery.

- The practitioner and the gallery should discuss and agree who is to pay the cost of framing and whether commission is to be calculated on the framed or unframed price. In most cases the practitioner is responsible for the cost of framing their work for the purpose of presenting and selling the work. In the case of unique items (as opposed to editions) the gallery commission is applied to the achieved process including the frame unless otherwise agreed. In the case of the editions the practitioner's receipted framing costs should be refunded to the practitioner from the sale of the work and the commission calculated on the unframed selling price.

Tax

- Practitioners must supply the gallery with the Australian Business Number (ABN) and advise the gallery whether or not they are registered for Goods and Services Tax (GST).
- Both galleries 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 agent and the Australian Taxation Office.
- The decision whether to register for an ABN and GST should be made by the practitioner and their tax agent. Galleries may recommend, but should not insist, on GST registration by their practitioners.
- When entering an agreement where work is sold on consignment and both practitioner and gallery are ABN and GST registered both parties should clarify which one will issue the tax invoice to the buyer. If the gallery wants to issue the tax invoice when it should agree to provide the practitioner with a copy of the tax invoice in a timely manner.

Copyright

- The practitioner's copyright may be managed by the practitioner, the gallery or by Copyright Agency, the Australian visual arts copyright collecting agency. This should be discussed and agreed by the parties.
- The gallery should get express permission, preferably in writing, before reproducing a work, even for promotional reasons, and should not necessarily expect that the practitioner will give permission without charge.
- The gallery should not be expected to pay copyright fees for the reproduction of the practitioner's work where the purpose of the reproduction is to sell the original of the work on the practitioner's behalf (such as invitations, catalogues, advertising and publicity purposes); where the gallery is in a direct and continuing relationship with the practitioner; and where the relationship is nurturing of the practitioner's career rather than purely financial.
- All commercial uses of art work by the gallery should be negotiated separately and attract a licence fee – for example, for the production of merchandise such as postcards or t-shirts.
- The gallery should not encourage or unduly influence the practitioner to assign or licence their copyright.

Moral rights

- The gallery must not require the practitioner to consent to something that would infringe their moral rights.
- The gallery must not alter the work 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 gallery must correctly and clearly attribute the work to its creator.
- The gallery should consult with the practitioner regarding the presentation and installation of the work.
- The gallery and the practitioner should agree on appropriate signage if the work requires a public warning regarding its content.

Media and promotion

- The gallery and the practitioner should discuss and agree in writing the best promotional strategy for work, including frequency and timing of exhibitions and whether work should be available for selected view prior to an exhibition being scheduled.
- The promotional activities undertaken by the gallery on the practitioner's behalf should be clearly documented and regularly brought to the practitioner's attention.
- At the conclusion of an exhibition, the gallery should present the practitioner with a media package containing copies of advertisements, invitations, press releases, reviews and other relevant materials relating to the promotion of the exhibition.

Duty of care

- The gallery should exercise diligence and care when handling, storing, displaying and packing the work, and undertake to supply suitable insurance, display, security, lighting, fire prevention and environmental controls.
- Should a work be damaged while entrusted to the care of the gallery, the practitioner should be consulted in the first instance and given first option to repair the work or approve the chosen conservator. The gallery should cover the cost of repair.

Insurance

- Galleries should carry an insurance policy that comprehensively protects works in their care, custody and control both in the gallery and in transit. If there is a justifiable reason why they do not, they should inform the practitioner in writing.
- The agreement should clearly detail the types of insurance provided by the gallery for the work in transit and/or in the gallery (for example, theft, accidental damage, malicious damage, public liability).
- The agreement should also detail what process will be followed where work is damaged during transit to the gallery including notification of the practitioner.
- In the event of any breakages, theft or damage to the work in the gallery's care, the practitioner should be paid regardless of the gallery's level of insurance or the time taken to settle the claim.

Additional obligations of the practitioner

- The practitioner should supply the gallery with a list of suggested invitees for exhibition openings, including a list of those who have previously bought their work.
- The practitioner should deliver (and in some cases collect) the agreed work to the gallery in good order at the agreed time.
- The practitioner should provide accurate biographical and contact information to the gallery.
- The practitioner represented by a gallery should not undermine or compromise their relationship with the gallery by attempting to establish an independent business relationship with clients or by disclosing the client list to any other party.
- Where a gallery has significantly supported and assisted a practitioner to access international markets, the practitioner should ensure through their contract and discussion/negotiation that the originating gallery is acknowledged through a

percentage fee of any sales generated over an agreed specific time period. While the amount in dollar terms may be low, it is an acknowledgement of the risk and support that the gallery has undertaken in promoting and exporting the work of the practitioner overseas.

- The practitioner should respect health and safety parameters enforced by the gallery and recognise their responsibility to protect those who work near or are viewing their work.
- When the practitioner received directly an invitation to exhibit work in another place the practitioner should disclose and discuss this with the gallery.
- The practitioner should credit the gallery when their work is exhibited in any other venue (except where that exhibition is initiated by one of the practitioner's other galleries).
- If the practitioner is going to be uncontactable for an extended period of time (for example on a residency) then the practitioner should make their gallery aware of the situation and leave instruction for the gallery should they have any administrative enquiries come through during this period where the practitioner's agreement is required (for example licensing requests and media interest).

Mediation over breaches of contract

- Mediation should be sought in the case of disputes over breaches of contract before legal action is commenced.

1.1.2 Single or one-off exhibitions

In some circumstances, practitioners may organise a single or one-off exhibition with a gallery where there is no commitment to a continuing relationship. Such circumstances include, for example, a practitioner who organises a one-off exhibition in a different city or region that lies outside their normal area of representation, or when a gallery agrees to take on a practitioner for one show only. This may be in order to test the market for their work, prior to any offer of full representation being made. Both parties need to be absolutely clear and have a written agreement on matters such as the duration of the relationship, level of services provided, and commission charged to avoid possible confusion about the nature of the representation down the track.

In a one-off exhibition, the costs to the practitioner can vary greatly. Practitioners are usually responsible for transport costs, framing, promotional and private view costs and, depending on the arrangement, display costs. The commission paid to the gallery should be proportionate to the financial input from the practitioner.

- There should be a written contract or agreement.
- The gallery and the practitioner should consult and jointly determine who pays for any costs.
- The gallery and the practitioner should jointly agree upon the appropriate amount of commission paid to the gallery and it should be proportional to the level of service supplied by the gallery.
- Commission for a single exhibition should be less than the 40 percent for full representation.

1.1.3 Multiple sales outlets

A practitioner who does not have an exclusive relationship with a representing gallery may exhibit in several different venues more or less simultaneously in a given area, sometimes in

the same city. For those craft and design practitioners whose works have a low commercial value, it may be best to look instead for galleries/retail outlets by suburb and where exclusivity is important to the gallery/retail outlet, to consider offering exclusive products. In lieu of any contractual obligations, outlets and practitioners should apply principles of co-operation and common sense to resolving potential problems such as over-exposure of work and pricing differentials.

The question of territory should also be discussed with the practitioner's dealer/agent to ensure there is no difference in expectations. Artists may seek representation in different states and territories and should check their contract/agreement to ensure this action is accepted by their gallery.

- The practitioner and the gallery/retail outlet should discuss the placement and/or exhibition of their work in other venues and co-operate in managing the exposure of the work and pricing differentials.
- The practitioner should keep track of their work through up to date consignment lists. The gallery/retail outlet and the practitioner should mutually agree how to handle work on consignment that is not selling.
- Practitioners should refer clients who approach them directly back to their gallery/retail outlet.

1.1.4 Selling online

Many practitioners, art galleries, virtual galleries, and retail outlets sell work online. Craft and design practitioners in particular may have their own website or sell work via online marketplaces such as Etsy, Big Cartel and Madeit. Practitioners should not undercut their gallery/retail outlet by selling directly online without having a negotiated agreement. Similarly, a gallery/outlet should not undersell the maker by placing items on sale/ at a discount without prior agreement. See further *1.4.1 Managing Impact on Representation/Retail Relationships* below.

Online sales

- Works sold by a gallery/retail outlet online may be subject to the same arrangements as works sold through the physical gallery/retail outlet, including in relation to commissions.
- Galleries/retail outlets or practitioners who sell work online should check:
 - What additional fees are involved, if any
 - How secure the website is against copyright infringements and protocols for enforcement against infringement
 - Any representational or definitional issues e.g. 'handmade', 'ethical', 'Australian made'
 - That the work is properly attributed and interpreted
- Practitioners with websites should notify their gallery and provide links to their gallery's website and vice versa.
- Practitioners and galleries should remove such links when the relationship between the parties has ceased.
- Practitioners selling online through marketplaces or their own website will also need to consider Australian and international Consumer Law, such as safety regulations. See Australian Consumer and Competition Commission (ACCC).

Intellectual property

- The gallery or the owner of the website should discuss with the practitioner whether people visiting the site should be able to download copies of the work or alternatively deal with the work in a way that requires permission. Either way, the gallery or website owner should obtain relevant written permissions.
- Practitioners who become aware of products infringing their copyright being sold online, for example a t-shirt bearing an image of their artwork, can apply to the website for it to be removed from sale following that website's infringement procedure.
- The practitioner may wish to specify details, such as the pixel resolution preferred for the uploaded image. For example, a low pixel resolution may provide some protection from use of unauthorised copying. In such a case, the gallery should agree with the practitioner to clearly indicate on the site the purposes for which the work may be downloaded.

1.1.5 Tax considerations when selling on consignment

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.

Where the practitioner is GST registered, GST must be charged on the sale price of the work irrespective of the sales outlet's or other business' 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.

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.

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.

1.1.6 Work bought outright by galleries/retail outlets

An alternative for the gallery/outlet to taking the practitioner's work on consignment is to buy it outright for resale. This has the advantage of being a simpler transaction for both the outlet and practitioner, involving only a contract and an understanding of standard terms of payment. The question of responsibility for display costs, insurance, and return of work is clear-cut in an arrangement where the work is bought outright.

When galleries and retail outlets purchase work outright, they usually add mark-up to the practitioner's wholesale price to arrive at the retail price of the work. The practitioner may not have any say in the level of mark up, and therefore what the retail price will be. There may also be resale royalty implications when a work is first bought by a gallery for later resale.

Contracts and agreements

- A contract of sale should be drawn up which confirms the gallery/retail outlet's copyright and moral rights obligations to the practitioner and stipulates any other conditions or information such as display information, practitioner access and a resale clause.
- The contract or agreement should also outline the Resale Royalty implications for the practitioner who may be entitled to a 5% royalty on the second commercial sale of work/s sold for more than \$1,000 after June 2010. For more information on the Resale Royalty Scheme and to register, visit the [Copyright Agency](#).

Product development

- In some instances, a retail outlet may develop a product in collaboration with the practitioner, provide insight into market demands and trends and act as a partner in the development of the product. While this is not necessarily a commission in the traditional sense of producing for a particular person or organisation, the standards relating to commissioning of art, craft and design can be applied to this kind of product development.
- The recommendations in *Chapter 4: Special Purpose Commissioning* should be observed for product development between a retailer and the practitioner.
- Where the retailer is involved in product development with the practitioner, the retailer should purchase the stock outright once it is developed to an agreed outcome.

Pricing

- Pricing, including wholesale/retail, visual concept fees, trading terms should be negotiated between the practitioner and the gallery/retail outlet when developing the contract for the product/s.
- The practitioner should set a wholesale price and advise on a recommended retail price for the work.
- The practitioner should discriminate honestly between production line, limited edition and 'one-off' works and price or recommend on pricing of work accordingly.
- The practitioner may offer the gallery a two-tier pricing system for taking work on consignment and for buying work outright. The mark up on works bought outright may be higher than the fee that would have been received by the outlet under a commission arrangement. This increased return to the outlet recognises that the outlet has taken on the risk of the sale.

Mark up or commission

- The practitioner and the gallery/retail outlet should agree on variations in the amount of the mark-up or commission according to the scale of the order and the wholesale value of the work.
- Where other agencies or galleries have been involved in the sale of a work, the total of the mark-up or commission should remain the same. By prior agreement, the total commission should be split appropriately between the managing parties, so the practitioner receives their full wholesale price as agreed.

Discounts

- Selling at a discount is to be discouraged. Gallery/retail policy on discounting should be clearly understood and agreed to by all parties.

Payment and sales

- The practitioner should establish a credit reference for the gallery/retail outlet to ensure it is reputable and that the practitioner will be paid for work bought outright.
- Payment by the gallery/retail outlet to the practitioner should be made within 30 days or less as negotiated.
- 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.

Insurance

- Insurance for the work in transit to and from the gallery/retail outlet needs to be negotiated and agreed. Once received, the work is the gallery's/retail outlet's responsibility to insure.

Personal Properties Security Act (PPSA)

The PPSA offers artists some limited protection to artists if a gallery, in which they have work on consignment, goes into administration or closes through the [Personal Properties Security Register](#) (PPSR). It is recommended artist's register each of their works on the PPSR that each gallery that represents them has.

1.2 Art consultants

Art consultants are paid by their clients to locate art, craft and design works for purchase. They undertake a range of activities including advising collectors on purchases; placing work in gift or lifestyle shops or other commercial enterprises; leasing works to businesses; and managing public and corporate commissions. Brokering commissions and project management may form a large part of an art consultant's work.

This section deals with the sale of work through art consultants. It does not address private commissions, which are covered in *Chapter 4: Special Purpose Commissioning*.

Contracts and agreements

- There should be a written agreement or contract between the art consultant and the practitioner that outlines the terms and conditions of the relationship. The detail of what should be included will depend on the nature of the relationship.
- The art consultant should also assist in ensuring that there is a sale of art work contract between the practitioner and the purchaser. The agreement should cover payment details, make purchasers aware of rights held by the practitioner and address any special considerations in relation to the display and care of the work. A Sale of Artwork sample agreements can be found through the [Arts Law Centre of Australia](#).
- A contract of sale should also inform purchasers of their copyright and moral rights obligations and stipulate any other conditions or information such as a resale clause, practitioner access, display information and maintenance/care instructions.

Payment

- Payment to the practitioner for sale or lease or commission of work by the art consultant should occur within 30 days of payment being received by the art consultant.

Commission

- Where the practitioner has Full Gallery Representation the art consultant should respect that relationship and deal through the gallery. In that case, commission should be paid by the practitioner to the gallery at the rate previously agreed. Then, if appropriate, the gallery should split the commission with the art consultant at a rate they have agreed. The art consultant should not be paid any additional commission by the practitioner.
- An art consultant should only receive commission directly from a practitioner where the consultant takes on a representation role on behalf of a practitioner who is not otherwise represented.

Consignment

- The art consultant should sign and return a copy of the consignment list supplied by the practitioner as a receipt of work.

Costs to the practitioner

- Materials used in the work are the responsibility of the practitioner. The practitioner should incur no other costs when supplying work to the art consultant such as transport or insurance costs.

Copyright

- Unless agreed otherwise the agent is legally obliged to obtain permission from the practitioner (or, if relevant, from the practitioner's copyright agent), for example, to photograph a work to show to a client.
- The agent should not use such reproductions for purposes other than those agreed to.
- Where the agent's client has particular uses of the work in mind which involve copyright issues, the agent should negotiate a copyright licence and appropriate payment with the practitioner (or with their copyright agent) or inform the client that an agreement is necessary. The sale should not be contingent on a licence agreement being granted, and any licence agreement should be subject to separate payment.
- Agents should inform their clients that a work is subject to copyright, and that purchasing work does not in itself give the client any copyright rights. In doing this, agents perform a service to their clients as well as to practitioners.

1.3 Private collectors

Private and public purchasers of art, craft and design need to be aware of some of the protocols and special conditions that apply in the industry.

For example, requesting discounts can undermine a fragile market and deprive practitioners, many of whom have very low earnings from their art/craft/design practice, of full and fair remuneration for their good and services. There are usually small profit margins in the labour-intensive creation and selling of art works.

Contracts and agreements

- A sale of artwork contract should be drawn up between the practitioner and the purchaser. The agreement should cover payment details, make purchasers aware of rights held by the practitioner and address any special considerations in relation to the display and care of the work. Sale of Artwork sample agreements can be found through the [Arts Law Centre of Australia](#).

Practitioner/gallery relationship

- Purchasers should respect the practitioner/gallery/agent relationship where it exists and not pressure practitioners to bypass their agent or gallery.

Full value payment

- Artwork should be purchased at its recommended retail price (RRP). The RRP should be set by the practitioner in consultation with their gallery or sales outlet and it may include GST if the practitioner and/or gallery is registered, any commission and any other costs or mark ups. The RRP should not be undermined by purchasers insisting on discounts or gifts.

Copyright and moral rights

- Collectors must observe the requirements in relation to the practitioner's legal rights such as copyright and moral rights in their work.
- Copyright is not transferred to the purchaser, the practitioner retains the rights to licence the image of the work.
- The practitioner retains the right to be attributed as the creator of the work, the right against false attribution and the right of integrity in the work.
- Practitioners should not be requested to assign copyright.
- The practice of acquiring a non-exclusive license from the practitioner to reproduce a work after its purchase for a collection should be limited to specific non-commercial uses. Purchasers should not expect that such permissions will be given at all, or that any such permissions will be given for free. These are matters for the practitioner and/or their copyright agent to decide in the particular circumstances.
- Practitioners should be paid for any commercial uses of their work.

Resale royalty

- When work being resold through an art industry intermediary (auction house, gallery, dealer) is purchased a resale royalty may be included in the price which is collected by the Copyright Agency and passed on to the practitioner.

Access

- Practitioners should be allowed access to their works for documentation and for exhibitions elsewhere, subject to normal conservation and collection considerations.

Destruction

- In the event that a work is to be destroyed, the owner should notify the practitioner and give them reasonable time to document and/or remove and re-house the work. Where practical, the owner should give the work back to the practitioner at no cost.

1.4 Practitioners selling work

In addition to selling through galleries/retail outlets, practitioners may sell directly from their studio, including via their website, through online marketplaces or from stalls at markets or events. More information about selling online can be found at *1.1.4 Selling Online*.

1.4.1 Managing impact on representation/retail relationships

The important principle to follow here is that practitioners and their galleries/retail outlets should discuss and come to an agreement on the best and fairest way to handle practitioners selling directly from the studio.

Practitioners who have a Full Gallery Representation relationship with a gallery or outlet will be expected to refer all sales to the gallery or outlet and pay the agreed commission which may also include public art commissions. This should be stated in the agreement between the gallery/retail outlet and the practitioner.

Where the practitioner has multiple representation agreements, arrangements such as splitting the commission can become complex. It is very important therefore for the practitioner to discuss these issues with all sales outlets implicated in a sales relationship to determine a workable solution.

Practitioners and their galleries/retail outlets should have agreements in writing on a pricing and commission policy to handle sales made direct from the studio or as a result of a practitioner's website or market sales.

If the practitioner's agreement with the gallery or outlet is not for Full Gallery Representation, one of the following options may be agreed to:

- Practitioners agree to refer clients back to the gallery/retail outlet to make the sale.
- Practitioners split the commission on studio, internet or market sales.
- Practitioners pay a reduced commission on studio, internet or market sales.
- Practitioners sell direct to the public at the recommended retail price with no commission payable to the gallery or outlet.

1.4.2 Selling at markets

Art, craft and design practitioners may sell directly at markets. A practitioner can use a market stall to establish recognition of their practice, establish their 'authorship' of their works, and to build relationships with their client base and collectors. Many practitioners find that market stalls drive business to their online retail outlet/s.

Many markets have a defined target audience, for example, those looking for the handmade or those looking for designed products, so it is worthwhile for a practitioner to research whether a particular market is a good fit for their practice.

Practitioners should discuss participation in a market with any gallery that represents them and any retail outlets prior to participating, treating the market as another gallery or retail outlet.

Practitioners participating in a market should:

- Carefully read the regulations of the particular market to be sure that they understand their rights and obligations

- Ensure works/products comply with market regulations, e.g. 'made by the stallholder', 'designed by the stallholder'
- Check fees and rules regarding setting up, packing away, cancellations and adverse weather
- Obtain liability insurance (see *Chapter 11: Insurance*)
- Ensure that their products comply with consumer law see the [Australian Consumer Commission \(ACCC\)](#)
- Consider travel costs.

1.4.3 Tax considerations when selling directly to the buyer

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. If, however, the purchaser of the goods or services is from outside Australia, for example purchasing via an online site, then GST is not applicable.

See also *Chapter 10: Tax*

Chapter 2: Public Institutions and Events

2.1 Australia's publicly funded galleries

The benchmarks set in this document are relevant to and should be applied by Australian art, craft and design institutions including University Art Galleries and Museums, Contemporary Art Spaces, Craft and Design Centres, Artist Run Initiatives, Festivals, Regional Galleries and major State and National Galleries and Museums wherever applicable.

Galleries exhibiting contemporary visual art, craft and design have proliferated in Australia since the 1980s. Today, many of these galleries have formed networks of 'like' organisations. The research done for this project looked at six of these groupings:

- National Museums and Galleries
- State Galleries including Modern and Contemporary Art Museums
- Regional Galleries and other Local Government Art Spaces
- Members of the Contemporary Art Organisations Australia network (CAOs)
- Members of the Australian Craft and Design Centres network (ACDC)
- Artist Run Initiatives.

These sectors represent 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, craft and design. The defining characteristic of these sectors is that they are not for profit entities that receive the majority of their funding for administrative and operational purposes from one or more levels of government: federal, state and/or local. The majority of exhibitions are available to the public for free.

Some galleries have large permanent collections that make up the majority of art work on display whereas others show only temporary exhibitions of loaned or commissioned art work from Australian and international practitioners. 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 professional development opportunities such as seminars and conferences. All play an important role in bringing the art work of contemporary Australian practitioners to public attention and some provide both exhibiting and selling opportunities.

There are many other contemporary art and/or craft and design spaces and networks operating in the public sphere that are not funded in the same way or to the same extent as the above groups. These also play an important role in presenting and/or marketing the art work of Australian practitioners but were not covered in this research. These include university and art school galleries and Indigenous art and craft centres; artist run initiatives; and exhibition spaces associated with artist membership and advocacy organisations (with mixed sources of funding) are included when they receive government funding.

2.2 Principles of best practice

2.3.1 Goal of mutual benefit

In financial terms, galleries and practitioners both benefit. The practitioner will gain a fee for their work as well as possible referred commissions and an increase in the market value of

their art work. The publicly funded gallery will not only fulfil their funding agreement but 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.

In artistic terms, the opportunity for practitioners to show artwork, engage in creative and critical discourse and build audiences is extremely valuable for the development of their career and their practice. Participation in a curated exhibition, supported by a scholarly catalogue in a high-profile venue, can greatly enhance the development and presentation of new work. This can be particularly important if art work is not oriented to the commercial market. While not all publicly funded galleries offer all of these benefits, every exhibition helps to promote the art work of the practitioner and enables them to further develop their practice.

At the same time, galleries gain from exhibiting art work by Australian practitioners that is new, challenging and engaging. Audiences (taxpayers) and funding bodies expect innovative and high-quality programming across broad media categories and subject matter. Exhibiting work by contemporary practitioners can achieve for the gallery higher numbers of visitors, increased membership levels and an enhanced profile in the international, national, state or local community.

2.3.2 Reality of cost

Both the practitioner and the publicly funded gallery invest time, energy and money to bring an exhibition to the public. The art work arises due to a long term and ongoing investment by the practitioner in their own training, in the maintenance of their work space, and in the development of their professional practice.

The capacity of publicly funded galleries to provide financial and in-kind support towards an exhibition depends on their operating budget and their ability to attract additional project funding from public and private sources. Levels of funding differ greatly across the sector.

Publicly funded galleries should meet all the costs of promotion (advertising, signage, invitations, opening); catalogues (writing, design and printing), installation (lighting, labour, technical equipment and special requirements), freight (to and from the gallery), insurance, and fees to practitioners (for loan or development of art work and/or other services provided). For fees payable to artists see *Chapter 7: Fees and Wages*.

2.3 Best practice standards for publicly funded exhibitions

The following best practice standards are for non-selling exhibitions in publicly funded galleries where the art work is owned by the practitioner. The principles are relevant to any gallery operating in the public sphere and for a wide range of exhibition types.

Policy statements

- For the guidance of practitioners, gallery staff, and boards of management, publicly funded galleries should have publicly available documents that provide accurate and transparent information about their policies in relation to exhibition, the payment of fees and any cost sharing arrangements.

Written contracts or agreements

- A written exhibition contract or agreement between the organisation and practitioner should be used as per the funding agreement that the organisation has with the

funding body. Sample agreements can be found on the [Arts Law Centre of Australia](#) website.

- The contract should make the expectations of each party clear.
- The contract should detail fee payments clearly identifying the artists' fee, production fee and other fees where appropriate.
- The contract should identify the dates, location and title of the exhibition.
- The contract should include a full and detailed list of art works loaned including any preferred working for attribution or, if for new commissioned work (non-acquisition) an artist proposal.
- The contract should include timeline for the delivery of art work and other supporting material such as images, statements and biography.
- 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 practitioner/s.
- Amendments to any contract or agreement should only be made in writing with the agreement of both parties.

Payment of fees to practitioners

- For existing works practitioners should be paid an artist loan fee for the use of art work in curated, non-selling public exhibitions where the art work is existing and owned by the practitioner.
- If a gallery/organisation is commissioning new work by the practitioners, they should be paid an artist fee and a materials fee for the production of the work. The payment of fees should be standard practice and not dependent on grant funding for a particular practitioner, exhibition or tour.
- If an artists' work from a private collection or as part of an inter-gallery or inter museum loan is being borrowed by a gallery or museum gallery, the exhibiting gallery/museum should notify the artist of this loan and its inclusion in the exhibition program.
- If the practitioner retains copyright of the artwork they should also be paid a copyright fee related to the exhibition of the work and inclusion of images of the work in any promotional material. Practitioners are entitled to set the conditions for reproduction of images of their art work, including the payment of licence fees, other than for 'Fair Dealing' and other exemptions under the Copyright Act. However, practitioners may wish to grant certain uses of images of their art work without fee to publicise the exhibition.
- In addition, the gallery should also pay other fees for associated services such as artist talks, workshops, specific promotional appearances, travel costs, etc.
- The contract should specify the date by which payment of the fee/s can be expected.
- For other types of exhibitions such as awards, prizes and competition finalist exhibitions (where work is not offered for sale), fundraising exhibitions or student work exhibitions practitioners generally are not paid. However, this is something that needs to be addressed by the industry particularly where the exhibition is being toured or the gallery is charging an entry fee. It is recommended that an artist fee is paid for these types of exhibitions.

Tax status

- Both the gallery and the practitioner should identify if they are ABN and GST registered. A party which is GST registered must supply a GST compliant tax invoice for goods and services provided.

Transport and installation

- The gallery or exhibition organiser should pay for freight and transit insurance of art works both to the gallery and from the gallery back to the practitioner, unless otherwise agreed in writing with the practitioner.
- The practitioner should provide detailed packing or repacking instructions where this will assist in the safe handling of their art work.
- The gallery should meet the costs of installation of the art work in the gallery unless this is particularly difficult or unusual. In that case the costs and requirements should be negotiated and agreed in writing with the practitioner in advance, including any potential damage that might occur to the gallery during installation and exhibition of the art work. A condition report on the gallery before and after installation 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 or through the gallery's insurance policy.
- For audio-visual and performance work, prior agreement should be reached between the gallery and the practitioner on the art work's duration, frequency, timing and public notification of that timing.
- Galleries and/or organisations should insure the work whilst in the gallery space and during installation and de-installation. If the gallery or organisation is also organising the transport of the work then they should also be responsible for insuring the work whilst in transit.

Exhibition costs

- The gallery or exhibition organiser should cover all of the exhibition costs for a curated, non-selling exhibition including publicity and marketing activities, 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 practitioner, including income foregone or licence fees waived, should be negotiated without duress and agreed to in writing by the practitioner and the gallery in advance.
- Practitioners may reasonably be asked to cover late changes instigated by the practitioner to a publication such as a catalogue. This does not include instances where the gallery/organisation has incorrectly credited an art work or practitioner.

Sales enquiries

- Sales enquiries arising from a non-selling exhibition should be referred by the gallery to the practitioner or the practitioner's representative dealer, agent or gallery.

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.
- The gallery should maintain comprehensive insurance for the full value of the art work as agreed in the schedule.

- 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 practitioner while he/she is creating and installing the work on-site.

Duty of care

- The gallery and or exhibition organiser should exercise diligence and care when handling, storing, displaying, packing and transporting the art work, and undertake to supply suitable display mechanisms, security, lighting, fire prevention and environmental controls.
- To ensure public access to the art work, the gallery should take responsibility for ensuring that technical equipment, lighting etc. is fully functional during the hours agreed.
- For new media/digital works the gallery should deal with technical breakdowns promptly and notify the practitioner of malfunctions if the problem can only be rectified with the practitioner's assistance.
- The gallery exhibiting the art work should assess the art work and document its condition on arrival noting its insured value and any special conservation requirements.
- The gallery has the right to question the stated value of an art work and seek independent valuation from at least two qualified valuers if the value attributed appears unrealistically high for insurance purposes.
- Should an art work be damaged, the gallery should consult with its insurer and/or the practitioner or art work owner. The decision on how and if to repair a damaged work should be negotiated with the practitioner. The gallery should cover the costs of repair unless the art work, at the practitioner's request, has been presented in a manner that precludes the gallery from caring for the art work properly.
- Should the damage be beyond repair, the practitioner should be paid the full insured price of the art work and, if the insurer agrees, the damaged art work should be returned to the creator.
- In a situation where decay or deterioration is an intrinsic and stated characteristic of the art work, any deterioration should not be subject to repair or compensation.
- Permission from the practitioner should be sought if the gallery or exhibition organiser wants to reframe or remount the art work. The gallery should return the art work to the practitioner in its original frame or mount unless otherwise agreed.

Freedom of expression

- The gallery should endorse freedom of expression by participating in public discourse and supporting any practitioner whose practice is being impugned through restrictive suppression of expression rhetoric.
- The gallery should develop a charter of practice for addressing freedom of expression which would include anticipating or dealing with public outcry. This could take the form of:
 - endorsing a statement of principles in relation to support for a practitioner's right to artistic expression
 - putting in place consultation or reference groups to encourage informed public debate

- developing guidelines and practices which can be called upon, if required, to address anticipated or actual expression of public concern about the content or form of an exhibited work.
- being willing to support and foster art/craft/design which may be considered risky.
- The gallery should establish a set of guidelines that aim to deal with any controversial issues associated with an exhibition in a way that limits damage to the practitioner's reputation or exposure of the practitioner to unreasonable pressure or media attention.
- The gallery should work in partnership with the practitioner to address or deal with the controversy.
- If the gallery intends to apply any warning or other advice to audience members about art work in an exhibition, the purpose and wording of this should be agreed with the practitioner before such notice is applied. The practitioner should have the right to withdraw from the exhibition if they do not agree with this notice.
- If an art work is withdrawn from exhibition by the gallery, for any reason, the practitioner should be notified immediately, and reasons provided for the withdrawal. A gallery which withdraws art work from an exhibition may be breaking its contract with the practitioner and therefore withdrawal of art work from an exhibition should only be done where it is absolutely necessary. Galleries should predetermine what these situations might be and develop a risk management strategy which it implements to avoid withdrawal of art work after it has been accepted for exhibition. If the gallery chooses to withdraw the artwork any payments due should be made to the practitioner.
- Galleries may decide to seek classification from the Classification Board for artworks or catalogues as a clear mechanism for providing choice to audiences.
- If occasion arises, the gallery should have a list of appropriate art and legal experts who can be called together to advise on appropriate action at short notice.

Media and promotion

- Prior to the exhibition, the gallery and the practitioner should agree on the extent and nature of the promotional activity to be undertaken by the gallery and the practitioner's degree of participation in the promotional activity.
- Practitioners should receive a specified number of complimentary copies of an exhibition catalogue or other published materials, for example a percentage (2-5%) of the print run for a monograph, or 1-2 complimentary copies for a large group exhibition.

Copyright and moral rights

- The gallery must appropriately attribute the creator of the art work and must not alter or do anything that would compromise the integrity of the art work or permit anyone else to do so while the art work is in the gallery's care.
- The gallery or exhibition organiser should respect the copyright of the practitioner and ensure that these rights are respected by all parties and the general public.
- All uses of a practitioner's copyright by the gallery should be negotiated with the practitioner or their copyright agent and documented in a written licence agreement.
- If the practitioner retains copyright of the artwork they should also be paid a copyright fee related to the exhibition of the work and inclusion of images of the work in any promotional material. Practitioners are entitled to set the conditions for reproduction of images of their art work, including the payment of licence fees, other than for 'Fair Dealing' and other exemptions under the Copyright Act. However, practitioners may

wish to grant certain uses of images of their art work without fee to publicise the exhibition.

- All commercial uses of art work by the gallery should be negotiated separately and attract a licence fee – for example, for the production of merchandise such as postcards or t-shirts.
- A gallery which reproduces art work on a website should investigate and establish procedures that limit external reproduction and protect the practitioner's copyright as far as possible.
- Except in line with copyright law exemptions, taking photographs of art work should not be allowed without the written permission of the practitioner.
- The gallery should refer all external enquiries regarding the reproduction of the practitioner's images to the practitioner or their copyright agent.
- The gallery should not use its documentation for any purpose other than archival and research purposes and should request permission from the practitioner to reproduce work for any other purpose.

Sponsors

- Where a sponsor/s is involved in an exhibition, the gallery should inform exhibitors of the sponsor's involvement and the nature of its business interests prior to seeking confirmation of participation. Equally, practitioners should identify in their initial discussions and contract negotiations any sponsors they would not want to be associated with.

Disputes

- When disputes occur, the practitioner and gallery should agree to follow a process that involves in the first instance, meeting to attempt 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.

Obligations of the practitioner

- The practitioner should supply the gallery with a full descriptive list of art works in the exhibition, including a description of their condition. This list should be checked by the gallery against the art works delivered within a specified number of days, signed and a copy returned to the practitioner as a receipt.
- The practitioner should ensure that the gallery has sufficient information to correctly install and describe the art work.
- The practitioner should supply accurate biographical information to the gallery.
- If the practitioner has a representing gallery the gallery should be credited. The requirements of the representing gallery should be relayed to the public gallery by the practitioner. If the gallery neglects to do this any costs required to remedy the error should be borne by the gallery.
- The practitioner and the gallery should consult regarding any health and safety implications of the art work and the practitioner should respect the gallery's recommendation for the safe display of the art work.
- The practitioner should be responsible for their own documentation of the art work while it is on exhibition. The gallery should provide the practitioner with reasonable access to undertake this documentation.
- The gallery may need to know whether the art 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 art work. Therefore, the

practitioner should inform the gallery of any other exhibitions of his or her art work occurring in the immediate period prior to the exhibition.

Considerations for events and projects in public spaces

- Practitioners and organisations working in the public space will have additional considerations to negotiate which often means longer lead times necessary for implementing site specific projects and/or activities.
- Similarly to working with public institutions, practitioners and organisations should develop contracts which include outlining fees, detailing liabilities and relevant insurances, transport, installation/de-installation, media and promotion, duty of care, copyright and other associated project and exhibition costs, however they will also need to comply with state and local government guidelines and considerations.
- Whether practitioners or organisations are looking at developing a project in a public space there are certain permissions or permits they must get from local or state government. These can sometimes have a cost attached so the project should be budgeted accordingly. Projects in public spaces can vary from occupying parks, streets or roads to presenting performances or music. Matters which may have to be considered are things like accessibility, noise, building structures on thoroughfares, traffic controls, health and security. Each Local Government Area (LGA) has different event application forms and guidelines that practitioners will need to complete. Council permissions will need to be applied for prior to the event or project.
- Any additional costs that may arise in exhibiting art work in a public space should be covered by the organisation managing the event/project.

2.4 Selling art, craft, design works in publicly funded galleries

Works of visual art, craft and design may be sold through exhibitions or through a museum or gallery shop. Both situations are discussed below along with best practice guidelines.

2.4.1 Selling from exhibitions

Whether art, craft and design works should be sold from exhibitions in publicly funded galleries is a contentious area. Attitudes vary from believing selling is inappropriate or should always be of secondary consideration in the publicly funded setting, to believing that selling represents an additional benefit to practitioners and at the same time returns a small but useful income stream to the gallery.

Many public regional galleries across Australia do sell work from exhibitions some of the time. These galleries often host award, prize and competition exhibitions where it is usual for works to be offered for sale. It is increasingly common for regional galleries to sell work from other exhibitions as an important service which these galleries can provide to regional practitioners where there may be little other arts infrastructure that allows practitioners to sell their work.

Australian Craft and Design Centres routinely sell art work from exhibitions. Their curated exhibition programs aim to enhance public understanding of contemporary design and craft and introduce the art work of new practitioners. It has always been part of their role to provide sales opportunities. Many of these centres also host shops physically and online where local practitioners can sell their work.

Artist Run Initiatives (ARIs) each have different approaches to the sale of art work. Some ARIs offer work for sale and handle the sale directly with the buyer and take a commission, others may handle the sale and not take a commission and others may leave the negotiation of sales to be managed by the exhibiting practitioner and some do not offer work for sale at all.

If any gallery is not offering the artist's work for sale, then they should be paying the artist a fee so that the artist has the ability to make an income from the exhibition. See *Chapter 7: Fees and Wages* for appropriate fees.

Commission

Publicly funded galleries and ARIs that negotiate a selling arrangement with the practitioner may take a percentage commission on any sale of art work, this is different from a gallery that simply relays a potential buyer's interest to the practitioner. Commission fees in publicly funded galleries range from 10 to 25 per cent to be negotiated in consultation with the practitioner or, if represented, their representing gallery. Where art work is sold through an exhibition, the gallery acts as the practitioner's limited agent and the art work remains the property of the practitioner until it is transferred to the buyer.

Publicly funded galleries should not ask practitioners to cover some of the costs of the exhibition in addition to commission fees.

When a practitioner has more than one agent, in this case a commercial gallery and a publicly funded gallery or ARI, it is standard practice for the commission on sales to be split equally between the public and the commercial gallery. This recognises that the publicly funded gallery or ARI does not offer the practitioner the ongoing benefits of commercial gallery representation, and that the commercial gallery has not met any of the costs in presenting the art work. Therefore, it might be argued that neither is entitled to the full commission.

Practitioners should ensure they understand the approach taken by their representing gallery prior to participating in an exhibition in a publicly funded gallery or ARI where art work may be for sale.

Fees

There are a range of practices in relation to the payment of fees for exhibited work that is also for sale. Some galleries may pay exhibition fees irrespective of the possibility for sales; others do not pay fees based on an assessment of the commercial viability of the work, or where an exhibition is not curated. The determining factor may be intent. Sales that are a by-product of a curated exhibition may be treated differently from an exhibition whose primary rationale is about making sales.

Setting a price

Practitioners should be prepared to determine both the wholesale price of their work and to set a recommended retail price. In doing so, the practitioner can better control the market value of their art work regardless of whether the setting is a publicly funded gallery, a museum or gallery shop, or a retail outlet in the private sector, and regardless of the varying levels of commission these venues take to facilitate sales of work.

Multiple sales outlets

These guidelines relate to the relationship between a practitioner and a publicly funded gallery. However, when practitioners have multiple sales outlets, especially within a close

geographic area and/or an online presence, they should be willing to negotiate timing and sales prices so that no party's financial interests are undermined.

2.4.2 Selling from museum or gallery shops

Most publicly funded galleries have a museum or gallery shop and/or online store. The merchandise sold through these outlets comes from many sources including contemporary Australian practitioners. Museum and gallery shops may approach practitioners specifically to provide art works for sale in which case commissioning processes should be followed, for more information see *Chapter 4: Special Purpose Commissioning*. However, it is more often the case that shops agree to take existing work or encourage practitioners to develop work suitable for sale in museum and gallery shops. Work may range from one off pieces to multiples or runs of items specifically produced to merchandising purposes.

Sale of return (on consignment)

Shops will either take work on a 'sale and return' basis, sometimes referred to as 'on consignment' or make an outright purchase of the art work for resale. Many only take art work on consignment because art work that does not sell can be returned to the practitioner after a specified period. This reduces the financial outlay and commercial risk for the shop.

The selling procedure differs in that when an art work is sold, the shop creates the tax invoice for the buyer (retail price plus GST) as if the gallery owned the art work. The gallery then contacts the practitioner and requests from them an invoice for the art work that the gallery has sold (wholesale price, + GST if the practitioner is GST registered). If the practitioner is not GST registered the GST should only be added to the gallery's mark up level.

Some shops will take art work on consignment to test the market and, once confident of a market for the art work, will then purchase outright.

Purchase outright (stock sales)

When art work is purchased outright, the art work enters the 'stock' of the shop and the ownership of the gallery. This can decrease the administrative costs for the shop as it reduces time spent tracking the status of the art work and reporting back to practitioners. It also allows the shop to vary the mark up and determine the final retail price.

In this case, the practitioner is paid the wholesale price + GST if applicable, and the art 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 shop takes 33.3 per cent of the retail value of the art work (exclusive of GST). Again, it is important for the practitioner to provide a recommended retail price.

This arrangement has the advantage of an immediate financial return to the practitioner, but the disadvantage of removing any direct relationship with the buyer. Practitioners can request that their biographical or other information be made available to buyers and/or is on display.

Other considerations

- Practitioners should not undercut a gallery or museum shop by selling directly online without having a negotiated agreement.
- Similarly, a gallery or museum shop should not undersell the practitioner by placing items on sale without prior agreement.

- Intellectual Property issues should also be considered such as use of images for advertising and online shops where the work may be sold.

2.5 Code of ethics for publicly funded galleries

Codes of Ethics set standards for the behaviour of staff, boards and volunteers in the operation of a 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. Actual, or perceived unethical decisions or questionable behaviour results in loss of goodwill, damage to reputations and relationships and unwanted attention from the media, regulators, funding bodies and the wider industry. Codes of Ethics should clearly communicate expectations and be a part of the induction and training of staff, board members and volunteers.

In 2014 a *National Standards for Australian Museums and Galleries* was developed through a collaboration between the Collections Council of Australia, Museums and Gallery Services Queensland, Museums and Galleries NSW, the History Trust of South Australia, Museums Australia Victoria, Arts Tasmania, Museum and Art gallery Northern Territory, ACT Museums and Galleries and the Western Australia Museum.

2.5.1 Best practice for a Code of Ethics

Professional Code of Conduct

An organisation should have a Code of Conduct which includes specific statements regarding its expectations for professional behaviour of staff, board, contractors and volunteers. This Code of Conduct should include:

- Adherence to the mission and goals of the gallery
- Observance of relevant international and national legislation and any applicable codes including discrimination legislation
- Conscientious discharge of duties
- Maintenance of confidentiality
- Responsible representation of the gallery to the public, other organisations and stakeholders

Conflict of interest

A gallery's Code of Ethics 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 seek or 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 art, craft or design 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 a practitioner with whom there is a personal or professional relationship or where there is a relationship with the gallery or dealer representing that practitioner.

- there is a financial interest on the part of the staff or board member in the market value of a practitioner's work by virtue of prior ownership and/or prior collection of that 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.

Commercial activities

A gallery's Code of Ethics should describe what constraints should apply regarding the gallery's 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 standards and do not involve exploitation of practitioners' copyright or other commercial interests
- selling practitioners' art work via exhibitions and retail outlets such as a museum or gallery shop. Galleries should ensure that their discounting policies and rate of commission do not exploit the practitioner nor penalise the commercial gallery sector. Where a practitioner is represented by a commercial gallery, commission should be split.

Acquisitions to a collection

A gallery's Code of Ethics should include or refer to specific policies covering procedures for the acquisition, care and use of collected art works, including:

- the gallery should clearly indicate that it will not buy art work from, or accept loans, gifts or bequests of art work from, members of the gallery's board of management, trustees, or staff, their professional associates or families
- the moral rights and copyright of practitioners in relation to art works acquired should be acknowledged and respected
- copyright licences should be sought where the gallery desires to reproduce the art 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.

Payment of artist fees

A gallery's Code of Ethics should include or refer to specific policies regarding the payment of fees to artists and arts workers for art work commissioned (acquisition or non-acquisition) or loaned, facilitation of workshops, attendance at speaking events, photography, consultations, curation, installation of work, licensing fees, writers fees, judging fees, reimbursement of costs such as travel, accommodation and per diems, and any other fees for work that the gallery may request. For appropriate fee rates see *Chapter 7: Fees and Wages*.

Deaccessioning and disposal

A gallery's Code of Ethics should include or refer to specific policies that clearly articulate the circumstances in which art works might be deaccessioned through donation, transfer, exchange, sale, repatriation or destruction.

- galleries should only deaccession art work following careful consideration and should follow strict procedures and observe legal requirements. It is recommended that art works be donated to another gallery in the first instance
- the gallery should determine who has the authority to deaccession an art work
- the gallery should not allow deaccessioned art works to be purchased by trustees, boards or gallery personnel, their families or close associates
- in the case of living practitioners, deaccessioning or disposal should be limited to art works that have deteriorated beyond repair, or where the art work is duplicated in the collection, or the gallery wishes to upgrade its representation of that practitioner and works with the practitioner to achieve this outcome
- galleries should take reasonable steps to inform practitioners when their art 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.

Public interest

A gallery's Code of Ethics, Code of Conduct and any other policy documents that underpin the Code should be made publicly available, generally on the gallery's website.

Chapter 3: Commissioning Art in the Public Space

3.1 Introduction

Public art projects offer new and exciting opportunities for practitioners, but at the same time, the commissioning process in some cases is very complex. For both large scale stand-alone public artwork, or works fully integrated into large building projects, the administrative, legal and logistical demands can be great. For practitioners, the development of the appropriate planning and business skills is crucial for this type of work. A common challenge for commissioners is recognising the differences in dealing with freelance practitioners from other professionals as well as developing and adhering to ethical and best practice commissioning policies.

Unlike many of the other professionals contributing to large building projects, an independent practitioner may be operating with very limited infrastructural support. Particular attention needs to be paid to drawing up purpose-designed contracts for practitioners working on public art commissions that recognise the nature of the work undertaken by a practitioner to deliver the project.

Allowances for the additional costs of engineers, consultants, traffic control, insurance and broader legislative requirements must be considered as part of the budget in addition to the practitioner's fee, fabrication and installation costs for the artwork and provision for repairs and maintenance. Some practitioners will have their own team to manage all components of the project, whilst others will be working independently and will need the support of the commissioner to manage the necessary requirements. Another option is to involve an intermediary such as a public art co-ordinator, project manager, or public art agency.

3.2 Types of public art

Public art can take many forms in many different materials. It can be free-standing work or integrated into the fabric of buildings or outdoor spaces. It can be a sculpture, installation or even a performance work. Practitioners may work individually or with other practitioners and manufacturers to produce their works.

Public art can be permanent, lasting many years, or temporary, lasting a few hours, days or months. It can be site-specific, drawing its meaning from and adding to the meaning of a particular site or place, or non site-specific, located in a public place primarily for display purposes.

A public art project may have varying degrees of community participation. The amount and type of community participation desired needs to be determined at the start of the project and articulated clearly in a document known as a project brief. This is to ensure that the expectations of the commissioner, the practitioner and the relevant community or stakeholder group are articulated as clearly as possible before work begins.

Individual practitioner

The practitioner is engaged to develop a concept in response to a brief. Often the practitioner will subcontract others to help fabricate and install the work.

Collaborative

The project is realised by a design or artistic team rather than the creative vision of an individual practitioner. The design team may involve other professionals such as architects, landscape architects, graphic designers or a team of practitioner working in collaboration. In this case the practitioner is engaged as an artist consultant to contribute to an overall collaborative design process, which may or may not result in a distinct work being produced by the practitioner later in the process.

Community consultative

Where consultation with relevant community members informs and influences the project to varying degrees. The project should be structured so that it allows for community input at all stages. Community may refer to the broader public users of a space or a more specific section of the community.

Community participatory

Where members of a community actively participate in the design and fabrication of a project. These projects are generally regarded as community art and are guided by a practitioner who will act primarily as a facilitator encouraging members of the community to initiate and create. Practitioners undertaking community arts projects need to be aware that copyright and moral rights issues may not be as straight forward as those relating to the creation of art works by one individual. An approach should be determined before the start of the project.

Integrated design

A practitioner may be employed as a professional consultant to work as a member of a multidisciplinary design team. Collaboration between architects, landscape architects, planners and practitioners can be seen as an opportunity to cross disciplines, transcend hierarchies and develop highly innovative and relevant integrated design solutions for public places. All members of the team need to be brought together at an early stage of the project in order to ensure that the overall design is in fact created through a process of collaboration.

3.3 Commissioning models

Commissioners should consider the most appropriate manner of selection for each project. There are different methods used for selecting practitioners for commissions. Each has advantages and disadvantages and no one process is suitable for all projects.

Open competition

For publicly funded projects an open competition model is preferred. The stages are:

- Expression of interest request – advertisement invites suitably qualified artists to submit an expression of interest. The artist may be asked to provide a response to the brief and the site, images of previous commissions and related work, a CV. Concepts should not be requested at this stage.
- Shortlisting – the commissioner shortlists a number of artists from the expressions of interest. Artists may then be asked to attend a briefing or interview and then given an appropriate timeframe to respond to the brief with visual concepts. A fee is paid for this stage of the process.

Practitioners should not be expected to submit visual concepts as part of a selection process without being paid. The material presented to the commissioner during these stages of the process remain the intellectual property of the practitioner.

Direct commission or invitation

A shortlist of practitioners may be invited for a fee to submit visual concepts to a brief. Another option is the direct selection of a practitioner when the commissioner has a firm idea of the artwork they want to commission.

Whatever the selection process chosen by the commissioner, it is important that the procedures be transparent, that appropriate recognition is given to the work involved in submitting a visual concept or other proposal and that the practitioner's intellectual property is protected. Generally, issues surrounding the transparency and openness of a selection process are of greater concern where the project is publicly funded or is for work that will be sited in a public place.

The commissioner should not use a restricted budget as an excuse to transfer the costs of the selection process onto the practitioner, for example by requiring detailed submissions without offering a visual concept fee. The practitioner should retain ownership of submitted visual concepts, throughout the selection process.

The selection process should incorporate a clear timeline for the acceptance or rejection of submissions. Practitioners should be free to make alternative use of the visual concepts or submission once that time has expired, unless appropriate and fair alternative arrangements have been entered into.

3.4 The project brief

A detailed project brief should be written for each individual public art project. This brief may be developed by a committee of stakeholders in the project. All aspects of the project need to be covered so that expectations and conditions can be communicated clearly to all parties involved. The brief should allow adequate time and funds for project development and execution. Adequate time should also be allowed for the development and negotiation of the contract or commission agreement with the practitioner. The brief will cover many aspects which need to be included in the subsequent commission agreement or contract.

The project brief should include:

- The background including the commissioning agent, the community/district information and general background information.
- The site for commission including location and any considerations such as heritage, purpose, environmental, any limitations, and images/ maps if possible.
- The motivation or concept for the work including the vision or theme, the target audience and any other specifications for scale or materials.
- Practical considerations that must be taken into account.
- Consultations that may need to be undertaken with stakeholders and/or community members.
- Other parties that may be involved in the project such as advisory panels, project managers, organisations.
- The budget for the project including expenses that will be provided by the commissioner in kind.

- The commissioning process and schedule.
- Who to contact for more information.

3.5 Roles and responsibilities

3.5.1 The commissioner

It is important for commissioners to be realistic in their expectations for a project and match those expectations to the budget and the most appropriate type of project. For example, public art projects may be seen as a means of solving design problems, managing the use of public space, facilitating urban regeneration and development, or reducing community tension, to which they can usually only make a partial contribution.

The commissioner should also be mindful that in most cases they are commissioning the development and implementation of a new concept or artistic vision. This can be both exciting and challenging and will require the commissioner to be clear in their briefing but also flexible and responsive to the process. A commissioner not familiar with this way of working is advised to enlist the assistance of expertise that will assist them to work collaboratively with the practitioner to ensure the best possible outcome for all parties.

The commissioner should:

- Develop the project brief to give the practitioner a good idea of the scale and scope of the project and what is expected, so that the practitioner may decide whether they are interested in registering interest in a particular project.
- Determine the purpose of the project and use the rationale, location, scale, audience and other relevant factors bearing on the project to broadly determine the vision, theme or style of the art/craft/design work/s to be commissioned (without becoming overly prescriptive at this stage).
- Determine the budget for the public art project, ensuring that this includes adequate remuneration for the artist at the benchmark levels and at each milestone including for design concept production and that it is adequate to deliver on the full extent of the expectations outlined in the project brief and all legislative requirements.
- Ensure a management structure be put in place as well as decisions on who will develop the project brief and manage the project, how to divide tasks and whether to appoint an art coordinator/project manager. Fair and accessible criteria for selecting the practitioner should be developed and the type of selection process should be decided.
- Decide whether to involve the community and to what extent. If so, establish the mode of community participation in the project at the outset and ensure that expectations are clearly articulated in the project brief.
- Ensure the terms and conditions in the commission agreement or contract and the terms of payment that respect the professional status of the practitioner are fair and equitable. For example, this could include developing risk management strategies for long term maintenance, managing the project in a timely manner, developing realistic timelines for the practitioner to deliver the project and ensuring appropriate remuneration.
- Pay practitioners their fee either in stages with the bulk made in the first payment or upfront so they are able to pay the costs of fabrication and expert advice directly from the commission fee.
- Ensure standards of practice, safety requirements and legal and insurance obligations are met including insuring the work after it has been completed by the practitioner.

- Monitor the progress of the art work through regular meetings and studio and site visits should.
- Uphold copyright requirements for existing and new public work which includes recognising the practitioner/s design concepts and work/s are the property of the artist, preserve the integrity of the art work over its lifetime and pay for its regular maintenance and repair when necessary in consultation with the practitioner/s.

3.5.2 The practitioner

Practitioners need to become more active in protecting their own position by taking on greater professional responsibility, risk and coverage. They need to ensure they are given an appropriate contract, and that they fully understand their responsibilities and rights in relation to it. This includes an understanding of financial management, insurance liability, intellectual property, legislative requirements, and negotiation.

Before registering interest, the practitioner should:

- Ensure they have the appropriate level of experience (business and planning as well as creative/making) and type of experience (in, for example, community consultation) to fulfil the public art brief before making any submission. Less experienced or early career practitioners need to look carefully at the project brief to determine whether they may need to access other professionals in order to meet selection criteria relating to previous experience.
- Examine the project brief to determine whether it is sympathetic to the practitioner's work and philosophy, whether the brief is too prescriptive in terms of the artistic style required, whether the theme proposed for the art work is one they are interested in and whether there is some moral or political issue associated with the project with which the practitioner is unhappy.
- Value their own work and budget adequately for the cost and time needed for the project. The project brief and conditions of the contract or commission agreement will determine whether the budget seems reasonable for the scale of work required and whether the timetable is achievable or fits in with the practitioner's other commitments.
- Consult their representing gallery, if applicable, including on matters of commission due and the gallery's potential involvement in the stages of fabrication, installation or management of the commission. A practitioner should ensure they have a contract with their representing gallery that clearly stipulates the entitlements of that gallery when the artists is successful in receiving public art commissions.

When carrying out the commission the practitioner should:

- Liaise with the commissioning body to clarify the commission agreement or contract and have it independently vetted by a lawyer if necessary, then organise personal insurance and tax matters as required.
- Closely collaborate with the commissioning body and inform it of the progress of the work, through regular site and studio visits and meetings.
- Complete the project within the agreed timeframe and budget. If variations are required, the project should not proceed until these are negotiated. These agreements should be documented.
- Ensure the commissioner has the information they need for appropriate attribution on any public materials they may produce in relation to the public work.

3.5.3 The project manager

The appointment by the commissioner of an intermediary who negotiates between the commissioner and the practitioner and who may manage the entire public art project from inception to completion, has become more common in public art projects in Australia.

An intermediary may be employed to oversee a particular task or stage of the public art project. In some cases, a specialist consultant may be engaged for the practitioner selection process or to administer the commission agreement. In other cases, the commissioner will hire a project manager, art co-ordinator or art consultant to manage the whole public art project on his or her behalf.

3.6 Selection

3.6.1 Selection criteria

The committee who has developed the project brief should be the selection committee. Otherwise the selection committee should include a commissioner representative, a representative from all relevant stakeholders or stakeholder groups, and an appropriate expert – arts, architecture, landscape architecture.

The selection committee will need to meet to consider the expressions of interest submitted against the selection criteria, shortlisting criteria may include:

- The practitioner's relevant experience
- The quality of the practitioner's previous work
- The practitioner's relevant skills
- The suitability of the practitioner's work to the context
- The practitioner's interest/commitment to the project

3.6.2 Shortlisting

All submissions will need to be viewed against the selection criteria and a shortlist generated, this may be short or long list dependent on the commissioner's budget. The commissioner will then need to send the shortlisted applicants a letter of agreement informing them that they have been shortlisted and inviting them to develop a visual concept for the work. Any applicants who were not shortlisted should be notified of the outcome at this stage.

A fee should be paid to each of the shortlisted practitioners for this development of a visual concept. The shortlisted practitioners may also be invited to attend a briefing session and/or site visit to provide them with more background information to inform their visual concept. Practitioners should be given an adequate period of time to develop their concept taking into account the time to generate the visual material requested by the commissioner. The commissioner should also reimburse practitioners for their travel costs.

Depending on the preference of the commissioner there may be more than one stage of concept development and evaluation by the selection committee, at each stage the practitioners should be paid a fee for their time.

Once the selection committee has come to a decision the commissioner should notify the successful and unsuccessful applicants.

3.7 The contract or agreement

Public art is an area where contractual agreement is especially important because of the scope and complexity of the task, but sometimes it is the complexity of contracts that causes problems. The development of long and detailed contracts, especially in large public art projects, can make it difficult for practitioners to understand their responsibilities. Moreover, the contract may be inappropriate for artistic practice. Conversely, a contract that is too simple can leave too much open to interpretation and thus be no use in the case of disagreement or a dispute.

Agreement as to the terms of the commission contract should be reached as soon as possible following the selection process. The selected practitioner should not undertake further work on the project unless and until they have reached agreement with the commissioner about the terms of the commission contract, and that agreement is in writing and signed by both parties. This should be understood and respected by both parties.

The inclusion in contracts of such general terminology as 'reasonable', 'appropriate' or 'satisfactory' can have the effect of increasing rather than decreasing the areas of uncertainty and dispute. It is recommended that both practitioners and commissioners provide adequate detail for timelines, budgets, maintenance and insurance clauses.

Concept approval

The contract or agreement should outline the approved concept and include as an attachment the visual concept material provided by the practitioner at the point where they were accepted as the successful applicant. The approval of this concept and any specifications to changes will need to be referred to through the commissioning process, especially if at any stage the commissioner feels that the work being developed is not in line with what they have approved or makes requests for large or last minute changes.

Modification/ revision to concept

The contract or agreement should outline how many revisions or changes the commissioner can request to the concept design and at what stage in the commission process these requests can be made. Any additional changes or changes that require large additional financial outlay for the practitioner should be paid for by the commissioner.

Fees

Both commissioners and practitioners should be realistic about the work involved in carrying out the commission, and practitioners should be fully remunerated for their work.

Practitioners should be paid an artist fee; minimum fees are outlined in *Chapter 7: Fees and Wages*.

A series of progress payments should be made to the practitioner. A minimum suggested payment schedule requires a first payment to be made when the contract is signed, the second during the fabrication phase and the final payment on completion.

Where the practitioner is responsible for purchase of materials and fabrication costs, the payment schedule should recognise that practitioners usually do not have the economic resources to cover the costs of large projects in advance and that payments need to be made on time and the first payment may need to be a significant portion of the fee payable. A schedule of penalties for late payments should be included in the contract.

Prior agreement should be reached on the key meetings relating to the project the practitioner should attend. Attendance at any additional meetings should be paid according to an agreed hourly rate.

The contract or agreement should outline what costs are being provided in kind by the commissioner, this generally includes installation costs such as engineers, installation equipment, traffic control etc.

Provision should be made for handling unforeseen variations in costs. These may occur due to:

- general project delays.
- budget cuts within the commissioning body or other changes meaning that the project is not going ahead in its original form, requiring redesign or remaking of the work. Practitioners should be notified of these changes straight away and given the opportunity to present a new design/concept within these new parameters.
- extra modifications to designs made at the commissioner's request, when these are over and above the number of revisions specified in the contract as being covered by the original fee. The practitioner should not be expected to bear the additional costs in such circumstances. Appropriate design fees, and other costs for any additional labour, services and materials required due to circumstances beyond the practitioner's control should be paid by the commissioner.

The practitioner should be aware of any commission they may be required to pay their representing gallery as outlined in their contract with the gallery. If there is any commission to be paid to the representing gallery this should be commensurate to the services provided to the gallery in securing the commission and/or managing the project. Commission should always be calculated on practitioner's artist fee rather than the entire budget for the project.

Copyright

Copyright in both the preliminary visual material and the work should be retained by the practitioner. Any licence granted by the practitioner to the commissioner (or another party) to reproduce the work in any form should be paid for. This licence may be needed either from the practitioner or from the practitioner's copyright agent.

Clauses in contracts that stipulate that the practitioner who takes on the commission should not make a 'substantially similar' work in the future may be confusing to practitioners who practice in a certain style. Such clauses need to be clarified by the practitioner with the commissioner before the contract or commission agreement is signed.

If copyright is transferred to the commissioner, the following conditions must be met:

- the practitioner should be adequately remunerated specifically for the copyright in the designs, or the work, or both.
- the practitioner retains the right to reproduce the designs or the work in two dimensions for nominated purposes (for example, inclusion in a portfolio, submissions for grants, awards or promotional material).

Agreements that the practitioner and commissioner hold joint copyright in the work or designs is not recommended because this arrangement is likely to be unclear and neither party can control the actions of the other with respect to reproductions of the work.

Moral rights

- The commissioning agreement must not require practitioners to consent to any uses which would otherwise infringe their moral rights.
- The art work must be correctly and clearly identified as the work of the practitioner. The practitioner and the commissioner should agree upon the form and position of that identification in reasonable proximity to the work.
- The commissioner must not alter the work or do anything that would compromise the integrity of the work or permit anyone else to do so while the work is in their care.
- The lifespan and position of the art work commissioned for a public place should be specified in the agreement.
- The commissioner should be responsible for ensuring that the public art work is adequately maintained and protected.
- The decommissioning conditions of the art work commissioned for a public place should be specified in the agreement.
- The practitioner must be consulted if changes are proposed to the work, or to the location of the work. Relocation is strongly discouraged if the work is site specific. If the parties cannot reach an agreement about the changes proposed, the practitioner has the right to be disassociated from the work, for example, through the removal of their name from the work and the right to document the work in situ prior to its relocation or removal.

Insurance

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.

Generally, the practitioner is required to hold public liability insurance and to indemnify the commissioner against defects in the work for specified time period, sometimes the life of the work through indemnity insurance. Where fabrication of the work is onsite the commissioner should provide public liability insurance for that site.

It is important to clarify who is responsible for insuring the public artwork during fabrication. If the work is being fabricated onsite the commissioner should insure the work during fabrication. If the work is being fabricated offsite the practitioner should be responsible for insuring the work during fabrication. The cost of insuring the work during transit should be included in the commission budget.

If Workers Compensation insurance is required, this should be the responsibility of the practitioner and included in the commission budget.

Maintenance and repair

The contract or agreement should outline the maintenance responsibilities, repair processes and process of deaccession and disposal. This should be the fiscal responsibility of the commissioner, however the artist should be immediately notified of any damage or proposals

for changing/moving the work and be given the opportunity to provide advice or undertake repairs on public work. If undertaking repairs or changes on request by the commissioner, after the final delivery of the work, the artist should be paid appropriately for additional work outside of the initial project scope.

Termination

A termination clause should be included that outlines the conditions where the commission might be terminated. The practitioner should be paid for any work completed thus far if the commission is terminated once work has commenced. This clause should also outline what should happen if the practitioner falls ill or dies during the commissioning process.

Disputes

There is a need for appropriate dispute resolution mechanisms to address disputes that may arise over issues such as whether the work has been satisfactorily completed, who should bear the costs of changes to designs or to the work itself, differing expectations about completion, access to the work site, inspection of the work prior to completion, and so on. Dispute resolution should be conducted by an independent mediator agreed to by both parties. The costs of the dispute resolution process should be met by the commissioner.

The [Arts Law Centre of Australia](#) provides sample agreements for public art commissions. See also NAVA's [Public Art Commission Contract Checklist](#) for all items that should be included in a contract or agreement.

3.8 Fabrication and installation

Once the commission agreement has been signed by both parties the commissioner and practitioner should remain in communication regarding the progress of the project. If there is a project manager it is their responsibility to arrange progress meetings and assist in resolving any issues which arise, otherwise this would be the responsibility of the commissioner.

The practitioner should provide regular progress reports. Studio/workshop visits by the commissioner are to be encouraged as they provide an opportunity for the commissioner to become more familiar with the making process and to see the work evolve. Visits also ensure that there are no unwanted 'surprises' for the commissioner at the end of the process because the commissioner may not be expert in reading drawings or visualising a full scale work.

On public art projects it is important for the practitioner to maintain control over all stages of the making process. On a large and complex integrated public art project the practitioner may choose just to be paid a 'design fee' for their visual concept/s and leave it up to the commissioner to fabricate and install the work. This would reduce the financial risk for the practitioner however the practitioner should be providing comprehensive guidelines and completion designs to ensure it is implemented properly. This is an exception rather than the rule and it would still be advisable for the practitioner to maintain a supervisory role for the implementation of the work.

For public commissions that may include one off events or performances the commissioner should be working with the practitioner to produce any regulatory submissions as Local Governments often have set requirements for using public space that require approvals for

use up to 12 months in advance. The commissioner should be identifying for the practitioner any of these regulatory provisions they have to make and ensuring these considerations are included in the project timeline.

The commissioner should also arrange or work with the practitioner in fulfilling any regulatory submissions or requirements that are needed for installation of the work. This may include engineering certificates, approval to work onsite or access considerations such as traffic control.

3.9 Maintenance and deaccession

On sign off of delivering the project the practitioner should provide the commissioner with a maintenance schedule. The commissioner should implement a regular program of cleaning and checking the work to ensure that the work is kept in good condition,

The practitioner should be consulted if repairs to the work are required. Practitioner should be offered the opportunity to either repair the work themselves or supervise the work for an appropriate fee.

The commissioner also need to be aware that maintenance of the artwork may be required in order to uphold the practitioner's moral right of integrity in the work. This is also relevant if the site was to be redeveloped in the future and the impact that this may have on the relationship of the work of art to its location.

A public art work may need to be removed from public display for a range of reasons, including deterioration in its condition or circumstances impact on the site of the work and compromise its integrity.

The practitioner should be contacted if it is proposed that the work be relocated or deaccessioned. If it is not possible to contact the practitioner, then consideration need to be given as to who should be consulted on the practitioner's behalf e.g. the estate and current copyright holder.

If the public art work is to be removed from its site for disposal, the practitioner should be given the first opportunity to have the title in the work transferred to them and to document the work in situ. If the public art work is to be sold to the practitioner, the practitioner should not be charged more than either the costs of removal or the scrap value of the materials, whichever is the lesser amount.

Chapter 4: Special Purpose Commissioning

4.1 Introduction

Commissions may come from a variety of sources such as individuals, arts organisations, private sector companies and governments. The commissioner contracts the practitioner to create an original work or works for a particular purpose for an agreed fee. Commission may also refer to making additions, alterations or deletions to an existing product.

Special purpose commissions can include:

- portraits and other subject matter
- corporate gifts
- government and protocol gifts
- retail products
- commemorative works and awards
- illustration
- web design
- works for specific purposes such as merchandising
- architectural projects
- public artworks – see *Chapter 3: Commissioning Art in the Public Space*

Part of the complexity of fulfilling any commission is to ensure that the commissioners' expectations are fulfilled, and the practitioner is happy with the work, as well as having all parties agree that the process was worthwhile. Fulfilling these high expectations is not always easy and the process can involve balancing emotional as well as commercial and budgetary imperatives on all sides.

It is important for practitioners to be aware of the implications of staff turnover in commissioning organisations. Projects that are not documented and have been proceeding on the basis of verbal conversations with one member of staff can quickly founder and become fraught in such circumstances. It is recommended that practitioners keep written records of conversations and verbal agreements to ensure consistent processes and expectations. This can be as simple as a follow up email after a conversation that briefly notes any agreements made in that conversation.

4.2 The project brief

When a commissioner chooses to have something specially made rather than to simply to buy it ready made, as a first step, the ideas behind the commission need to be clarified and articulated, generally in the form of a project brief. This sets the agenda for the commission and provides the basis for both the commissioner and the practitioner to proceed. The commissioner may write the project brief independently and use this to select an appropriate practitioner, or they may develop the project brief in consultation with the chosen practitioner. In either scenario, the collaboration and ensuing dialogue between the practitioner and commissioner is crucial in order to achieve an end result satisfactory to both parties.

The commissioner should provide information about why they want the work made and what their expectations are. The commissioner should also indicate the constraints on the project, such as overall budget and timeframe. This will allow the practitioner to provide creative ideas and information about the possibilities of developing the work that are appropriate to those constraints. Practitioners should be confident in discussing accurate and realistic timeframes and budgets with the commissioner. Commissioners should realise that the shorter the time frame or smaller the budget, the more restricted is the range of possible solutions or techniques.

A written project brief should be prepared so it can be included in the contract or agreement. This will assist in making the expectations on all sides understood. The project brief should include information such as the timeline including the selection process, visual concepts phase and execution and delivery.

4.3 The selection process

There are many different ways to find a suitable practitioner to fulfil a commission. The commissioner may make an arrangement directly with the practitioner or advertise for expressions of interest. Alternatively, the commissioner may seek the services of an artist's agency, or a gallery, art consultant/private agent, or retail outlet to assist in either the selection process and/or the management of the commission.

The basis upon which the selection is made may also vary. The commissioner may have personal knowledge of the practitioner or have worked with them before. Sometimes practitioners provide a response based on the commission brief that is then considered by the commissioner or a selection committee. Alternatively, one or more practitioners are paid a design fee to develop ideas, or to produce a prototype, from which one or more practitioners are then commissioned to produce the work.

Direct selection

The commissioner may already have decided on the practitioner for the commission and therefore chooses to deal directly with him or her. Likewise, some practitioners prefer to work directly with the commissioner. Much of the work commissioned in this way arises from a personal wish to have something special made for a specific purpose or a particular person. When the practitioner has arranged the commission directly with the commissioner, they should carefully consider any professional obligations they may have to an agent that represents them such as commission.

Call for expressions of interest

Some commissioners will call for expressions of interest from a number of practitioners. This selection process is appropriate for more complex commissions, such as architectural projects and has been detailed in *Chapter 3: Commissioning Art in the Public Space*. Where a selection process is used it should be as open and transparent as possible.

Selection through an artists' agency

The commissioner may contact an artists' agency to assist them in the selection of a practitioner. Artists' service organisations such as Artsource (WA), craft organisations such as Artisan (Old) and a number of other publicly funded organisations hold databases of member practitioners and practitioners who engage with special commissions.

Selection/management through an agent/gallery/retail outlet

Many practitioners prefer to have an intermediary to broker the commission. Not everyone is equally adept at negotiating a good deal and communicating effectively. Practitioners may consider using an intermediary if they have any doubts about their ability to negotiate or if they are embarking on their first commission. On a cautionary note, however, this does not mean either the practitioner or the commissioner can delegate their responsibilities to establish good communication and rapport concerning the commission solely to the intermediary. The intermediary's role is rather to act as a facilitator to ensure the commission is progressing well.

The agent/gallery/retail outlet may represent the practitioner and recommend him or her for the commission. The agent/gallery/retail outlet will be entitled to a fee (commission) for this service. The amount of the fee should be negotiated in the original contract or agreement outlining the terms of the relationship between the gallery/retail outlet/agent and the practitioner. When going through an intermediary such as a gallery/retail outlet/agent, the commissioner needs to be aware in negotiating the budget that some of the funds will be paid to the intermediary and therefore will not go into the work.

The gallery/retail outlet/agent may ask on behalf of the commissioner to select the practitioner for the commission. Again, a fee is payable to the agent/gallery/retail outlet which should be negotiated before any contract is entered into. A fee for this kind of one-off transaction is often in the area of 10 to 15 per cent of the commission value or it may be on a sliding scale.

A commission fee commensurate with the level of work undertaken by any intermediary (agent/gallery/retail outlet) should be negotiated at the outset and written into the contract or agreement. The intermediary's fee should be based on the practitioner's profit and not on the whole of the commission cost which may include materials, insurances, and other basic cost items. The practitioner and the commissioner should clarify who pays the fee to the intermediary, if applicable, and when it will be paid.

Selection following visual concept stage

If practitioner or several practitioners are requested to produce a visual concept for consideration, the practitioner should be paid a separate visual concept fee regardless of whether the commission proceeds or not. This fee recognises the time spent and the costs incurred to develop ideas for the consideration of the commissioner.

4.4 The contract or agreement

Consultation

The practitioner and the commissioner should establish good communication at the outset. Through discussion and understanding of expectations on both sides is necessary at every stage in the commissioning process. This is one of the most important factors to guarantee a successful outcome in a commission. Whether communication takes place by means of meetings at strategic points during the process, telephone conversations or studio visits, the commissioner must be kept involved and informed throughout the process up to the delivery of the final work. It is also a good idea to document discussions to ensure both the commissioner and the practitioner agree.

Contracts and agreements

It is best practice standards for a written contract or letter of agreement to be prepared that sets out the agreed conditions between the parties for a special commission.

A contract provides a means of dealing with different perceptions and understandings, and of negotiating and settling difficult issues. Commissioners can and sometimes do change their minds in the middle of the commission and a contract provides a written record of what was originally agreed to. A contract also sends a signal that the practitioner is operating at a professional level and should be treated accordingly.

Either the practitioner or commissioner can prepare the agreement. Where a commissioner does not provide any kind of written documentation then the responsibility rests with the practitioner to ensure that their own rights are protected.

Contracts and agreement could include details on:

- Timeframe
- Expectations of both parties
- Fees and wages including fees for visual concepts, adjustments or changes and copyright where applicable
- Copyright
- Moral rights
- Insurance
- Transportation and delivery
- Disputes

The more complex a commission, the more there is a need to document the agreement between the parties in the form of a contract. The [Arts Law Centre of Australia](#) provides excellent sample agreements that can be adapted for each commission.

Fees for practitioners

Practitioners should be paid appropriately and fairly for the commissioning of work. This includes fees for producing visual concepts, making, materials, packaging, installation, freight/delivery and insurance as well as agent or gallery fees where appropriate.

Visual concept fees

Current practice is that some practitioners incorporate their visual concept time into the total estimated cost of the commission, or factor visual concept time into their overall production/studio costs. However, this practice hides the real cost of the visual concept stage and encourages the notion that unused visual concepts do not need to be paid for. Ultimately, this devalues the creative skills and time of the practitioner.

The commissioner may request amendments to the visual concepts at the proposal stage. In most cases the practitioner can accommodate some minor adjustments at this stage, before the contract is signed and the commission commenced. This can be done as part of the visual concepts service and charged according to the way visual concept fees have been agreed to. Between them, the practitioner and the commissioner should discuss the nature and number of the initial visual concepts required and their relative costs to the commissioner.

The budget

An appropriate budget is one that provides a reasonable fee for the practitioner and includes costs of materials and other expenses while still staying within the price range the commissioner is willing to pay. It is crucial for the practitioner to be able to give the commissioner a clear and accurate estimate of the costs involved. Well-researched discussions on budget and costs can prevent cancellation of the commission by either party.

It is not unusual for an inexperienced commissioner to have unrealistic expectations of costs and it is important to negotiate this to ensure that the commissioner and the practitioner understand each other and are both happy to continue with the commissioning process. The commissioner should commit to a budget before the visual concept work commences, otherwise the practitioner may do a lot of work not realising the budget constraints.

Estimating the budget can become tricky when many different components must be included as a number of items may need to be considered when developing the budget such as details of packaging, freight, delivery, and installation costs. The potential exists for a commission to be loaded with so many costs that the practitioner effectively does not get paid for their work. In the case of multiples, it might be appropriate to take the final cost (retail cost) and calculate back, making allowances for agent/gallery commission where appropriate, materials, freight/insurance and packaging. This should provide a good picture of what is left for the practitioner as a fee for proposal costs, creating the work, or the wholesale cost of the work.

Payment schedule and terms

The payment schedule is outlined in the contract or agreement but needs to be part of discussions right from the first meeting. It is important to work out where the expenses will occur in the commissioning process. Most practitioners do not have the resources to cover the costs of materials and services for a commission without pre-payment. Where a visual concept fee is paid, this can provide an injection of funds to allow the practitioner to commence work. With other commissions, a deposit is required to retain the practitioner's services and begin the process.

The following payment schedule is recommended:

- Deposit 30% (minimum) on signing contract or payment in the form of a visual concept fee
- Two progress payments of 30% each if appropriate
- Final payment of balance on delivery.

Practitioners can request that a large deposit is made as this commits the commissioner to the project and makes it difficult for them to terminate the agreement.

In the case of large orders delivered progressively quantities should be stipulated in the contract with corresponding payments.

Late changes to the brief

Late changes to the brief may be requested by the commissioner. Where these entail major adjustments and occur after the contract or agreement has been signed, the practitioner should refer the commissioner back to the original visual concept and the agreement signed by both parties. An approval form for prototyping can also assist in this negotiation. The contract/agreement and prototyping approval form will become the joint record of the original discussions and agreement. These documents remind the commissioner that he or she has

provided input into the development of the piece and that to ask for changes at this stage will require additional expense. The contract/agreement can also include how many changes/edits may be made before further fees may be incurred.

Product development

It is not always cost effective or practical to develop a prototype, for example, for one-off works and jewellery. If this is the case, then the commission proceeds on the basis of visual concepts and the communication between the practitioner and the commissioner.

Where a work is being developed for the production of multiples, however, the development of a prototype is sensible and may be a requirement of the brief. A prototype is useful for a commissioner who may not be experienced in visualising the completed work from 2D representations alone. In addition, a prototype allows the practitioner to solve design and making problems early on, as well as providing important information to all parties that the commission can be fulfilled to specifications. Where the aim is to produce multiples, the advantage of a prototype is that the practitioner is able to make one piece and ensure that the process, materials and any other issues are dealt with through this one piece not one hundred. A prototype can also be a means of signing off on quality control.

Packaging

Packaging may be part of the presentation of the work that is integral to its design. This is the case with corporate gifts, awards and medals, for example. Some commissioners will specify what is preferred and/or required, such as materials, colours and use, and whether the gifts are being taken, or sent, overseas.

The commissioner should pay for all packaging. This means practitioners should include the design, making or purchase of packaging in their costing on top of making the work. If actual costs are not known at the time of contracting, an estimate based on the specifications and the practitioner's experience should be given. The commissioner should be clear that this is only an estimate. A firm figure can then be added to the final invoice once the work has been completed.

Freight, delivery and installation

Any freight, delivery or installation costs should be part of the commissioning costs and be included in the final costing for the work. This should be made clear when negotiating the commission and should be added to the final invoice once the work has been completed, along with packaging. Where work is to be installed, access to the site should be negotiated and outlined in the contract where appropriate.

Returns and maintenance

Practitioners should provide information concerning the maintenance and care of the work being commissioned. The practitioner should pay for work being returned for repairs if there is a problem with the production or quality of the work. If the work is damaged or broken by the commissioner, the practitioner should be given the first option to repair the damage at the expense of the commissioner.

The commissioner should check immediately upon delivery that the work received has achieved the agreed level of quality, and if not, notify the practitioner about any concerns or discrepancies. This should occur within seven days.

In the case of a large commission involving the production of multiples, the development of a prototype approval form may assist in avoiding the need for a commissioner to return unacceptable work. Return privileges should be discussed and negotiated early on in the commissioning process and outlined in the agreement.

Practitioners should ensure the work that leaves the studio is what the commissioner is expecting. If in doubt, or if there have been problems in the studio, this needs to be communicated to the commissioner. Especially in the development of multiples, the prototype approval form is the way a practitioner and commissioner can ensure that the work is exactly what was agreed to. In the case of other commissions, the contract or letter of agreement is the reference point when delivery is made.

Copyright and moral rights

Practitioners should retain copyright in their work and licences may be granted. Sometimes practitioners are requested to assign copyright to the commissioner, for example in the case of commemorative medals. In most instances relinquishing copyright is a consequence of working with government departments. Some practitioners, when required to do this, are not particularly concerned about assigning copyright to the commissioner. This is due to the nature of the commission. The practitioner is making something quite specific for the commissioner that the practitioner is unlikely to make again. In such circumstances, the practitioner would request a licence to reproduce the work as part of their portfolio and promotional material.

In some instances, there have been disputes over issues to do with ownership of preliminary visual material submitted as part of the practitioner's project proposal. The commissioner may wrongly believe they have purchased all the preliminary material submitted. This is separate from the issue of copyright ownership but does demonstrate the confusion that exists about what part of the designs or products of the commission the commissioner actually buys and/or owns.

When developing product for merchandising, practitioners may be asked to produce work 'in the style of...'. In most cases this will only occur when the original work is in the public domain (no copyright pertains). Accepting a commission to undertake 'in the style of' work which is still covered by copyright will require permission to be sought from the creator of the source work and is not recommended as best practice.

Practitioners retain the right to have their work properly attributed and treated respectfully. The art work must be identified as the work of the practitioner. The practitioner and the commissioner should agree upon the form and position of that identification.

Where a practitioner makes work based on the work of another practitioner, both need to be attributed (acknowledged as authors) by appropriate signage. In some cases this can be in the form of attribution on the actual product through a label or other kind of branding as well as signage within the retail outlet.

Moral rights when one practitioner commissions another

Another form of special purpose commissioning occurs when a practitioner sub-contracts or otherwise works with another practitioner to realise a work or product. For example, a visual artist or designer might engage a craft practitioner to make an object, or a sculptor or ceramicist engage another practitioner to cast or throw or fire a work. Different forms of practice have different traditions of acknowledgement. For example, there are celebrated

ceramicists who acknowledge the practitioner who throws or fires their work, but this is less common in other forms of practice.

Moral rights apply in these circumstances and the role of all practitioners involved in the work should be publicly acknowledged unless there is negotiated agreement to the contrary. The form of such acknowledgement can be very simple, for example, '[XXX] designed and decorated by [XXX], on a form made by [XXX], 2015' or '[XXX], by [XXX] and printed by [XXX], 2015.

Where agreement is reached that a practitioner's role in the making of the work will not be acknowledged what is important is that this agreement be honestly made and fair and equitable, and that the unacknowledged practitioner be otherwise compensated for their work with the clear absence of exploitation.

Practitioners commissioning other practitioners should:

- think of the relationship as one of collaboration or partnership
- be mindful of the fact that when production is achieved through a craft practitioner the skill of that practitioner means that they have the potential to interpret design with a degree of thought that brings to bear the years of practice accrued.

Practitioners commissioning overseas craft practitioners should refer to the [SANGAM Code](#).

Termination/dispute resolution

A termination clause should be included that outlines the conditions where the commission might be terminated. The practitioner should be paid for any work completed thus far if the commission is terminated once work has commenced. This clause should also outline what should happen if the practitioner falls ill or dies during the commissioning process.

Difficulties can be encountered during the course of a commission. Many practitioners and commissioners learn through trial and error how to manage a commission and negotiate disputes. It may be irrelevant whether the practitioner is in the right in a dispute, as most do not have the resources to take any form of legal action.

To avoid the need to resolve any disputes through legal channels, it is important to outline within the contract or agreement a practical means of resolving a dispute. This recognises that there may be differences of opinion or expectations and that there is an agreed way of resolving these. The clause should recommend the appointment of a mediator that can assist in the resolution of the dispute.

Chapter 5: Residencies and Workshops

5.1 Introduction

Residencies constitute a unique opportunity for mutual benefit for both practitioners and residency organisations. In return for offering stipends, airfares, accommodation and the like, residency organisations (such as galleries and universities, hospitals and medical facilities or corporate entities) receive exhibitions, tuition, contribution to research profiles, cultural and community input, publications and promotional opportunities.

Residencies can offer opportunities that provide a powerful stimulus to artistic production including:

- space and time to experiment with ideas and processes
- exposure to different communities and environments
- professional development
- networking contacts with gallery and university personnel and other practitioners
- access to specialised equipment
- mentoring opportunities
- publicity and prestige
- financial assistance.

Not all residencies provide financial assistance, this is dependent on the body offering the residencies and their funding situation. Residency providers must make clear what expenses they will and will not cover and practitioners must ensure that they are fully aware of the costs they will be required to cover.

Workshops, where practitioners work as teachers for a fixed period in return for payment, are a more orthodox means of employment than residencies. Workshops may be conducted solely for financial gain, or as a form of irregular income, or for access to studio space and facilities.

5.2 Residencies

5.2.1 Types of residencies

Residencies vary enormously depending on the levels of funding, infrastructure and facilities available and the aims and objectives of the residency program. Some residencies have a particular outcome that this to be achieved such as an exhibition or the carrying out of community engagement or workshops while the artist is in residence. Other residencies have specified outcome other than the aim to allow the practitioner time and space to develop their practice.

Residencies can take place in a range of environments such as specific areas of historical, cultural or environmental importance, community facilities such as hospitals, schools or universities, and others provide studio space located in galleries or art centres. These different locations will give the artist access to specific equipment or facilities, exposure to a particular environment or community, and integration with an organisation.

5.2.2 Selection and application process

Selection and application processes should be made transparent by the organising body through providing detailed information on application forms, identifying:

- key objectives of the residency program
- eligibility criteria
- principal selection criteria
- areas of priority, such as regional areas, emerging artists, women, people for whom English is a second language or who are Aboriginal and Torres Strait Islanders, people with disabilities.
- any outcomes that would be required to be achieved by the practitioner during the residency such as the completion of new work, presentation of an exhibition or facilitation of workshops.
- funding models and involvement of subsidiary organisations, including what will be provided to the practitioner free of charge and what expenses a practitioner would need to cover themselves
- history, or background, to the program
- selection process, whether by conveners / jury, interview/image pre-selection
- previous successful applicants and projects
- desired format of application, including support material requirements application lodgement deadlines and address.

5.2.3 Contracts and agreements

All residencies should be conducted on the basis of a written document clearly outlining the terms and conditions of the residency including the expectations of the host and the participant.

For example:

- Who is to be responsible for payment of utilities such as electricity, gas, telephone, cleaning, rubbish removal and other sundries should be clearly enumerated in, or attached to, the contract or agreement.
- Who is responsible for payment of insurance and liability coverage for the practitioner and their work?
- Who is responsible for the payment of travel and living expenses?
- Who is responsible for materials costs associated with the production of new work?
- Are there activities residents must undertake such as talks, workshops or open studio visits?
- What is the payment schedule and when will invoices have to be submitted?
- If the residency is documented by the resident or host who has permission to publish or use these images?
- Is the resident able to have other people staying with them during the residency such as partners and children?

When a residency results in an exhibition of works, a separate exhibition contract or letter of agreement should be negotiated and signed. The [Arts Law Centre of Australia](#) provides sample agreements for residencies and exhibitions.

5.2.4 Remuneration and expenses

Residencies which do offer a residency fee do so at varying levels. Most offer a flat fee which assists in covering costs such as living expenses and materials, or just materials dependent on what other living expenses are being provided in kind by the organiser. If the organisation providing the residency is publically funded and requiring the practitioner to produce a new work, present an exhibition (non-selling) or facilitate workshops as an outcome of the residency, the practitioner should be paid an appropriate fee as outlined in *Chapter 7: Fees and Wages*.

Where no residency fee is being offered, practitioners must weigh up the non-tangible benefits of the residency and ensure that they would have the funds to meet expenses. This type of residency can be considered to be an exchange of in kind support, the organiser is offering accommodation and facilities, while the practitioner is offering whatever the required outcome of the residency may be. It is important to ensure that the exchange of in kind support is equal. Some organisers may not offer a residency fee, but do not require an outcome from the practitioner, essentially providing free short-term studio space. If the organisation offering the residency is publicly funded and not offering a residency fee it should not require a tangible outcome from the practitioner.

Where an organiser is requesting that participating practitioners pay a fee for their residency, the organiser should not place any requirements on the practitioner to produce an outcome, as this situation would be considered to be similar to the practitioner paying studio rent.

When residency fees are paid they should be paid as a lump sum upfront in order to purchase materials and equipment the practitioner may need. The contract or letter of agreement should outline how and when the practitioner will be paid.

The organiser should be able to advise the practitioner on how much it costs to live at a reasonable standard under the terms of the residency so that practitioner can budget their expenses.

5.2.5 Orientation and support structures

Providing good orientation for residents is crucial to the success of any residency and is therefore an essential component of best practice.

Organisers should help residents to settle into their new environments. This may include:

- being met on arrival at the airport
- providing clear directions to the resident's accommodation/studio
- ensuring the resident's accommodation/studio is ready on arrival
- providing keys and access codes to all available areas immediately
- providing maps of the building and immediate surroundings
- providing maps of the local area
- identifying shops, amenities and medical facilities in the local area
- providing a contact person to deal with all logistical problems
- providing contact telephone numbers for emergency services such as police, local hospital and ambulance services
- making introductions to technical and administration staff
- providing route maps and timetables for local public transport
- sharing 'local knowledge'—recommended restaurants, cinemas, bookshops
- providing networking opportunities to meet other residents and key industry figures
- circulating information about the resident and their project upon their arrival
- scheduling residencies to overlap or coincide to provide support between residents
- identifying a suitable contact person or mentor, with similar research or artistic interests
- informing the resident of relevant activities, groups, seminars, and meetings
- identifying materials or equipment suppliers relevant to the resident's practice.

Workplace health and safety

All institutions and organisers conducting residencies should be observant of WH&S principles. Inductions for use of specialist equipment and facilities will be required. Organisers should ensure that residents are informed of how to access medical services, emergency services and fire safety procedures.

5.2.6 Other considerations

Length of time

Residencies can vary in duration from four weeks up to twelve months. The minimum recommended time for any residency is four to eight weeks as this is only just enough time to settle in to a new environment and start producing work. Overseas residencies are generally longer—around four months. An overseas residency needs to be long enough for the practitioner to settle in to a different culture and make contact with local communities.

Access to transport and facilities

Access to transport should be provided for residencies in rural or isolated areas. Where local public transport is unavailable or inadequate, a vehicle should be made available to residents—perhaps for a stipulated time each week. As well as access to facilities such as printmaking workshops, organisers should arrange for access to printers and an internet connection.

Media and promotion

Organisers should invite journalists, media photographers and art commentators to attend official resident welcoming parties and/or distribute media releases announcing the arrival of the resident and the scope of their project and practice.

Copyright

It is best practice for the resident to retain copyright and ownership of all works produced during the term of a residency. Some residencies reserve the right under the terms of the contract to document the creation of art/craft/design work for archival purposes. If this is the case, the contract should state that documentation is not to be used for anything other than archival purposes, except with the written consent of the resident or their copyright agent.

However, residents may be treated as employees during a residency, especially at a school or institution, which will have some bearing on copyright. Otherwise copyright should remain with the practitioner. This should be specified in the residency contract or written agreement.

Any documentation of works produced during the residency should only be done with the permission of the resident. A specific clause relating to ownership and copyright should be included in any contract or agreement.

Tax

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.

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.

If the resident is treated as an employee for the duration of the residency, any payments made as salary or wages must be Pay as You Go (PAYG) taxed. 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.

Insurance

Insurance conditions differ across residencies depending on their type and residents should be made aware of their insurance status. Public liability insurance should be covered by the host organisation or institution. The responsibility of insurance is generally with the practitioner and should be outlined in the contract or agreement.

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, 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.

Residents who are employees under the terms of their residency must be covered by the host organisation's workers' compensation insurance.

Workplace Health and Safety

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

Residents should be fully briefed on WH&S issues relating to the residency or workshop workplace or environment.

All institutions and organisations conducting residencies should be observant of WH&S principles and act accordingly with due diligence.

Practitioners undertaking residencies 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 WH&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.

Contracts and agreements should stipulate compliance with the observance of WH&S principles.

5.2.7 Workplace Codes of Conduct

Observance of workplace Codes of Conduct is particularly important for residencies and workshops conducted at institutions such as prisons, hospitals or schools. An artist in residence or workshop facilitator may be required to undergo a Criminal Record Check and Working with Children Check and to sign a confidentiality agreement, for example, agreeing to keep all patient information confidential.

Practitioners should be briefed on security arrangements and any potential workplace precautions or routines that should be observed and respected. They also need to be briefed in workplace Codes of Conduct and areas of sensitivity prior to commencing the residency.

Practitioners in hospitals may find that there are legal and ethical restrictions placed on their interactions and the type of work they can exhibit. This may also apply to working in any context in which the practitioner comes into contact with children.

5.3 Workshops

5.3.1 Types of workshops

Workshops, where practitioners provide their services as teachers in return for payment, can be offered as contract work, casual employment or as components of residencies. A workshop can vary from a one of session presented as part of an exhibition or program, to ongoing workshops after school or during school terms. In most instances the practitioner is invited to a facilitate the workshop or may be masked to propose a workshop around a particular topic, theme or technical skill.

In-kind workshops

These are workshops delivered by practitioners often in exchange for use of certain facilities, equipment or access to space. These arrangements are often mutually convenient for practitioner and organisation. In an in-kind arrangement, the practitioner may benefit by not having to pay for the use of facilities.

If entering into this type of informal in-kind agreement practitioners and organisations should both be aware that the in-kind workshop value should be commensurate to the access to facilities and/or equipment being provided to the practitioner.

If both parties are registered for GST, there are still GST obligations which must be met. Tax payments must be made based on the value of in-kind assistance provided. Practitioners in these cases may be covered by public liability insurance held by the organisation, they may also be entitled to superannuation if earning from workshops exceed \$450.

Contractual workshops

If a practitioner is contracted by an organisation to facilitate a workshop/s at least minimum workshop rates should be paid to practitioner, rates can be found in *Chapter 7: Fees and Wages*. The practitioner may also stipulate their own fee rate. The practitioner may have to provide their own public liability insurance, they may also be entitled to superannuation if earning from workshops exceed \$450. The cost of materials and equipment should be provided by the organisation, the practitioner may source their materials and be reimbursed, or all material provided by the organisation, dependent on what is practical considering the materials needed.

Practitioners may also hire out spaces or facilities in order to run workshops where the practitioner arranges the workshop and collects payment directly from students. The practitioner will nominate the charge for the workshop, take enrolments and collect the fees from participants. Materials and equipment may be supplied by the practitioner or by the students depending on the fee charged. Generally, the practitioner is responsible for their own public liability insurance.

5.3.2 Contracts and agreements

Workshops should operate on the basis of a signed agreement. All workshop agreements should be negotiated through a written and signed contract outlining payment and schedule of fees, responsibilities for materials and equipment costs, insurance arrangements, observance of workplace health and safety measures and workplace Codes of Conduct.

Responsibility for payment of hiring fees, administration fees and utilities such as gas or electricity should be clearly delineated in the contract. Responsibility for the purchase of materials and payment or reimbursement arrangements should also be clearly stated and agreed upon in the contract or agreement.

All institutions and organisation conducting workshops should be observant of WH&S principles. Workshop facilitators in institutions such as prisons, hospitals and schools should be fully briefed on workplace codes of conduct and areas of sensitivity prior to the commencement of the workshop.

Tax

If the practitioner is treated as an employee, any payments made as salary or wages must be Pay as You Go (PAYG) taxed. 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 practitioner 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.

Insurance

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. Practitioners who are employees will be covered by the host organisation's workers' compensation insurance.

Practitioners 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.

Workplace Health and Safety

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

Workshop facilitators should be fully briefed on WH&S issues relating to the workshop workplace or environment.

All institutions and organisations conducting workshops should be observant of WH&S principles and act accordingly with due diligence.

Practitioners facilitating 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 WH&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.

Contracts and agreements should stipulate compliance with the observance of WH&S principles.

Chapter 6: Awards, Prizes, Competitions and Fundraising Exhibitions

6.1 Introduction

These guidelines can be used by practitioners and organisers of awards, prizes, competitions and fundraising exhibitions as a checklist for ethical practice. Organisations may organise awards, prizes or competitions to bring contemporary art works to their audiences, to foster artistic talent, provide selling opportunities for practitioners, and to develop their collections.

Sponsors often play a key role through the provision of financial or in-kind support. In this way sponsors support the arts and their local communities and hope to benefit from brand name association with these events.

Before entering an award, prize or competition practitioners should make themselves aware of the nature of the business of any sponsor to ensure that they have no ethical reservations about being associated with that sponsor.

6.1.1 Conditions of entry

In Australia the conduct of awards, prizes and competitions is not regulated. The conditions of entry are a contract between the practitioner and the organiser and therefore should be read carefully. Practitioners must sign these conditions of entry, and therefore accept, the conditions offered in order to participate. Organisers should provide adequate information and assurances that the rights of practitioners will be properly protected.

Organisers and venues need to clear in conditions of entry whether works will be insured while being installed and on display.

Organisers should not insist on being given free reproduction rights for work entered for purposes that would properly attract a copyright fee.

6.2 Venue and event information

The location, dates and duration of the event must be clearly indicated in the conditions of entry. Some history about the organisation, the events, the display conditions and the venue can assist practitioners in assessing whether their work is appropriate.

Because of the potential involvement of multiple parties (an organiser, a host venue, many different sponsors), it is very important that all promotional material and advertising clearly identifies the organiser(s), the sponsor(s) and the purpose(s) of the event. Communicating the reasons for organising the event can be a strong motivator for practitioners to participate and can generate public support and larger audiences.

All posters and other promotional material should clearly include the identity of the organiser and contact details for further inquiries. This is particularly important where confusion might arise between the organiser and the venue hosting the event. The Conditions of Entry should indicate the governance and/or business structure of the organiser.

All sponsors of the event generally, and of each prize if sponsored by a particular entity or individual, should be clearly identified in the Conditions of Entry and in associated publicity. Organisers should develop a contract or agreement with each sponsor identifying the nature of the relationship and the expectations of each party. It may be the case that a practitioner will not wish to participate due to the presence of a particular sponsor.

Organisers should be clear as to where the finalist exhibition will be held including the display conditions and security that will be in place to protect the works. Assurances on security can encourage practitioners to submit works of a higher value.

6.3 Eligibility requirements and restrictions

The conditions of entry should describe in detail the value of and eligibility requirements for all prizes to be awarded. Eligibility requirements for practitioners may be based on where they live, their gender, whether they are Aboriginal or from the Torres Strait Islander, media, subject matter or size of the work. Prizes may also be given to people from particular subsets including youth or amateur categories; such categories can offer encouragement and recognition of achievement.

Prize value

Organisers should ensure as far as possible that, where prizes are offered in multiple media categories, the prize values are similar. Lesser value is acceptable for junior or student entrants.

Size of work

The conditions of entry should clearly identify all size and weight restrictions for individual works. Sizes should be given in metric measurements, but imperial measurements can be added. The measurements should specify total square metres, cubic metres, perimeters or lengths, and indicate whether these are frame sizes or work sizes. Organisers should accept the submission of maquettes for major sculpture prizes, or offer sponsorship for the cost of materials, manufacture and freight.

Media

If work of a particular media is not eligible for entry this should be clearly stipulated in the conditions of entry. If possible, a reason for not including a particular media is helpful for practitioners.

Eligibility for prizes or awards

If, in order to be eligible for a prize or award, works must be for sale, this should be stated in the Conditions of Entry. This requirement may be relaxed for works in specific subcategories, such as work by students or junior entrants.

If prizes or awards are to be given on the basis of merit regardless of whether works are for sale, this should be stated in the Conditions of Entry.

Exclusions

Organisers should exclude or clearly limit participation by individuals with a connection to the event such as relatives or employees of the organiser/s or committees of the organising

body, including judges, to avoid the perception of, or an actual conflict of interest. A statement to this effect can be included in the conditions of entry.

6.4 Preselection process

Most awards, prizes and competitions request that, as part of the submission process, practitioners submit images of their selected work/s, an artist curriculum vitae and a short statement about the practitioners work in general or the work/s being entered. From this submitted information a jury or sometimes a single judge then selects work to be included in the finalist exhibition.

Organisers should clearly identify what information is required from practitioners in order to assess suitability for participation. The conditions of entry should state for what purposes any or all of the material submitted may be used. Practitioners should be given the right to veto proposed uses to protect their privacy or to prevent unauthorised reproduction.

The details of how and when practitioners will be notified of selection should be included in the conditions of entry. When notifying practitioners of the results of the consideration of their material, organisers can send details of requirements for the submission of works selected.

6.5 Submission of works

6.5.1 Statement of originality

It is important that organisers ensure that the works submitted into a competition, prize, award or fundraising exhibition are original works created by the practitioners who submit them. Organisers should ensure that there is an appropriate clause in the conditions of entry stating that the work is an original, uncopied work.

Organisers should also indicate whether works are only to be submitted by the practitioner or whether third parties such as galleries or agents may submit work on the practitioner's behalf. Where third parties may submit work, the Entry Form should stipulate that a signature is required from the practitioner, or from his or her estate, and may *not* be signed by the agent on the practitioner's or estate's behalf. The exception is for practitioners with disabilities who may be unable to sign for themselves and may require an advocate to sign for them.

6.5.2 Number of entries

Conditions of entry should make absolutely clear the number of entries that will be accepted and whether works can be entered into more than one category. The organiser should ensure there is enough space on the Entry Form to accommodate information for the maximum number of entries.

6.5.3 Entry fees

Entry fees vary considerably from event to event. Some charge no entry fee, some a flat fee per practitioner, some a flat fee per work. Others charge varying fees depending on the category of entry or whether the entrant is a student or member of an art/craft/design association or other group.

Sometimes organisers will indicate that entry fees, or a component of them, cover specific costs such as a higher quality catalogue, or insurance for the works while on display. Such uses for entry fees are usually well received by practitioners.

The entry fee may be part of a practitioner's professional expenses and should be acknowledged with a tax invoice. Under GST rules, organisers must provide a tax invoice if the amount is over \$75. When the entry fee falls below this threshold, practitioners are advised to pay the entry fee by a method which leaves a permanent record (credit card statement or eft bank statement) rather than by cash.

Level of entry fee

The level of fee or fees charged should reflect the number of entries expected and the specific use of the income from the fees. The Entry Form should specify what forms of payment are accepted and, if appropriate, to whom a cheque or bank transfer should be made out. Entry fees should be kept as low as possible to encourage broad participation and in recognition of practitioners' usually constrained financial circumstances. Practitioners should *not* be charged high entry fees as a way of generating operating income or prize money.

6.5.4 Labels and requirements for display of work

Each work should have an information label, usually attached to the back or bottom of the work, that identifies information crucial to the organisers' management of the work. The identity label can include some or all of the following; the practitioner's name, address, and contact telephone numbers; the title of the work; the category or section into which it is entered; its item number; the sale price including commission, or a not for sale indication; a reference number; and information about the collection or return freight arrangements for the work.

The display requirements for each type of work should be clearly explained in the conditions of entry. Some organisers stipulate that paintings should not have attachments and cords (which might damage other works) whereas others insist that such works must have D rings or eye hooks with hanging wire attached. Sometimes there are specific instructions about where to attach hanging devices to the frame. Some organisers, especially for events that include sculpture and other 3D works, ask practitioners to provide a suitable display plinth or base.

Labels

Organisers should state clearly what information is required for the identity label. The label should be provided by the organiser to ensure uniformity. Organisers should not require that labels be permanently glued onto the back of the work, or information written directly onto the back of the work.

Requirements for display of work

Organisers should state clearly and in as great a level of detail as possible, exactly how to prepare the works for hanging or display. Where a large number of sculptural or smaller 3D works are expected, a more cohesive exhibition will be achieved if the organiser provides the plinths.

Organisers should state whether and how works should be framed, mounted and/or installed and whether this applies equally to all categories.

All exhibition venue workers should be instructed in correct techniques for un/packing, un/loading, storing, stacking, carrying and mounting works to protect both the works and the health and safety of the handlers.

Organisers should provide information about the systems available for the presentation of works using video, sound, film, computers, televisions etc. and take responsibility for their security and maintenance for the duration of the exhibition.

6.5.5 Delivery and freight

Delivery

Organisers should provide clear instructions regarding the accepted method of delivery of works with full details of date/s, place/s and time/s. Deliveries should be accepted over at least two days, including at least one normal business day to facilitate delivery by Australia Post, freight and courier companies.

Freight

Freight can be very expensive and a limiting factor in determining whether a practitioner will enter an event. Organisers should, if possible, develop partnerships with freight companies or specialist art carriers to offer discounts on freight costs and better security for the work in transit. Organisers can greatly assist practitioners by negotiating special arrangements. The benefits can include bulk discounts and reassurance for practitioners that their work will be professionally handled.

For most awards, prizes, competitions and fundraising events where work is for sale, the practitioners bear the cost of freight to the event, and if the work is not sold, from the event. If sold, the purchaser usually collects the work or arranges freight forwarding. Where the event is a non-selling exhibition, the practitioner usually bears the cost of sending the work and the organiser can bear the cost of returning it. However, the practitioner should check this policy before entering.

For national exhibitions, it can greatly assist practitioners if there are a number of nominated delivery points in capital cities and/or regional centres (usually a specific freight company) from which organisers can then arrange transport to (and from) the final delivery point. This can keep freight costs for practitioners down and organisers can benefit from dealing with one company.

The conditions of entry should clearly state whether payment for return freight is required in advance, and if so, what forms of payment are acceptable. Organisers should meet the cost of return freight if the exhibition is a non-selling event.

Practitioners should ensure they keep a record of the cost of freight for tax purposes.

Organisers should stipulate that entries received after the advertised due date will not be accepted (the exception being where the organiser is at fault, for example, advertising the wrong due date).

6.5.6 Insurance of work

Organisers should recognise that they have a duty of care in storing, handling and displaying works and back this up with the relevant insurance policies. Whilst the art/craft/design work is in the care and control of the organiser that the organiser should have insurance to cover

the works in the event of damage or theft. When work is for sale the organiser should accept this responsibility up until the work is collected by the buyer.

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. If the practitioner has business insurance, it may be possible for them to extend their premium to cover works held outside of their regular business base. Transit insurance on a one-off basis can usually be purchased from freight forwarding companies as an add-on to freight costs.

The conditions of entry should clearly indicate whether works will be covered by insurance carried by the organiser or by the venue during the period when the work is under the control of the organiser (including on site before and after the event).

[Transit and Exhibition insurance](#) is available for NAVA Members to purchase if required.

6.5.7 Repairs and maintenance

Sometimes damage occurs to works in transit, in storage or on display. A damaged work usually will be excluded from competition but, in some cases, minor damage is repairable.

Damage in transit

Organisers should ensure that practitioners receive immediate notification (within 24 hours) if work is received in a damaged condition. Organisers should ensure that their subsequent actions comply with any requirements imposed by the practitioner's transport insurer (if any).

If repairs are to be undertaken the practitioner, if local, may be able to undertake the repair. If this is not possible, after consultation with the practitioner, and only at their request and payment, the organiser may ask a qualified conservator with expertise appropriate to the work to undertake the repair.

Damage while in the care of the organiser

If a work is damaged while in the care of the organiser the practitioner should be consulted and given the first option to repair the work or to approve the chosen conservator. Such damage may occur prior to or whilst the work is on exhibition or during the packing of the work for return to the practitioner or for delivery to a buyer after a sale. The organiser should pay for the costs of repair.

6.5.8 Reproduction of works

It is very important that organisers state in the conditions of entry both the purpose and the duration of all proposed uses of the practitioner's works in reproduction. Many conditions of entry either do not specify these details, or inappropriately request extensive free reproduction (copy) rights.

Note that a prize granted to a practitioner for a winning work does not automatically give the organiser licence to use the work in reproduction other than for the limited purposes allowed under the Copyright Act. The acquisition of an artistic work does not grant the new owner copyright in the work. Copyright remains with the copyright owner (usually the practitioner), and any reproduction of the work requires the permission of the copyright owner under the terms he/she stipulates, which may include the payment of a licence fee.

Copyright licence fees are negotiable. A range of indicative benchmark fees are located in the *Chapter 7: Fees and Wages* and on the [Copyright Agency](#) website.

Some commercial enterprises offer competitions in which winning works and their associated copyright become the property of the commercial enterprise. The designs or images are then used to promote the products of the organisation/commercial enterprise. To avoid exploitation of participants the proposed payment to the practitioners must be clearly disclosed in the conditions of entry.

Copyright

An organiser who wants to use a practitioner's copyright should negotiate an agreement with the practitioner and pay an appropriate fee. Organisers should ensure that works are not photographed by members of the public except for purposes allowable under the Copyright Act.

Moral rights

The practitioners' moral rights must be observed. Moral rights provisions in the Copyright Act give the practitioner the right to be known as the author of a work (attribution), not to have the work falsely attributed and the right to have the integrity of their work respected (not to be altered, tampered with or damaged in any way). If reproducing work, the photographer should also be credited. Moral rights apply not only when a work is exhibited but also when a work is reproduced.

Subject's permission

Where winning photographs of people are to be used later for commercial purposes, organisers should ensure the permission of the subject, or the subject's guardian, is sought before such use.

Internet reproduction

Organisers who wish to include images of the winning work(s) on a web site should both pay appropriate licence fees and take steps to avoid copyright abuse such as limiting the resolution size of images.

Logo competitions

Organisers who offer logo competitions on behalf of sponsors where the winning visual concept becomes the property of the sponsor, should ensure that the winning practitioner receives appropriate payment. This should be agreed according to the proposed use for the transfer of ownership and/or the transfer of copyright to the sponsor.

6.6 Judging and announcing winners

6.6.1 Judging

The quality of the judge or judges says a lot about the event and can attract participation by practitioners who wish to bring their work to the attention of gallery directors, curators, arts writers and reviewers. Judges should be paid a fee as outlined in *Chapter 7: Fees and Wages*. It is important to identify a judge's credentials to potential entrants.

Judges need to know the extent to which their decision will be accepted by the organisers. Ideally, the judge/s should make the final decision on the winning works. If this is not the case, for example because the decision has to be approved by another party, this should be

made known to the judge/s when they are asked to participate and also noted on the conditions of entry.

The conditions of entry for many events state that all entries will be considered by the judge/s, but not all will be exhibited. Works may be rejected because they do not meet the entry criteria of size, framing, theme, media, labelling or because there is limited hanging space. The conditions of entry should state the criteria used to select finalists for the exhibition, and the circumstances under which advertised prizes or awards might not be given, if any.

To protect both the judge and the organisers, conditions of entry usually state that all decisions by judges are final and that no correspondence will be entered into. A statement disqualifying entrants who attempt to influence the judging can be included in the conditions of entry. Judges should also alert organisers to any conflict of interest if and when it arises.

If works are to be chosen for a permanent collection, the judge(s) should have prior access to the collection and a clearly stated acquisition or collection policy so that appropriate works may be chosen.

6.6.2 Rejection or censorship of works

In rare circumstances, organisers or judges may reject or in some way censor a work that violates laws e.g. in relation to obscenity, libel, defamation, sedition, invasion of privacy or breach of copyright, or which may in some way violate the agreements they have with their sponsors or funding agencies. This can be a contentious area, and organisers, judges and practitioners are recommended to seek legal advice about how to handle such issues prior to the exhibition of work. For information on best practice for exhibiting controversial work see NAVA guide [How to avoid trouble and how to deal with it](#).

Where works involve or reference Aboriginal or Torres Strait Islander persons or communities, practitioners and organisers should refer to Issues and Protocols Specific to Indigenous Practitioners at the beginning of the Code, Indigenous protocols such as NAVA's [Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector](#) and the [Australia Council's protocols](#).

Organisers who are funded by the Australia Council may also be bound to certain procedures which impact on practitioners if the organiser is exhibiting work which depicts children. These requirements are outlined in the Australia Council's [Protocols on Working with Children in Art](#).

Organisers should consider the possibility of having to deal with contentious works and create a risk management strategy that aims to recognise the rights of the practitioners entering the event, the public and the organiser's sponsors and funding agencies.

6.6.3 Disputes

Disputes can arise over many issues – the selection process and decisions by judges, the installation or hanging of work, handling or care of work in relation to insurance, splitting of commission with artists' representative galleries, payment and GST liabilities, and so on. A comprehensive Conditions of Entry document that clearly articulates the selection criteria, the judging process, and as much information as possible about the conduct of the event should help to prevent misunderstandings.

However, when these arise, organisers should have a mechanism to deal with them. This could be included as part of the event's risk management strategy. In addition, there are mediation services available if the dispute requires external mediation, such as the [Arts Law Centre of Australia's](#) mediation service.

6.6.4 Opening the show, announcing the winners

Most competitions, prizes, awards and fundraising exhibitions will have an opening event to which practitioners, sponsors and the public are invited. It is an advantage to have as many practitioners in attendance as possible for publicity value. Many organisers provide, in addition to the awards presentation, food and beverages and some charge a fee to attend.

Opening event

All participating practitioners should be invited to the opening event and should not be charged for entry. All sponsors should be invited to the opening and formally thanked and acknowledged according to their agreement with the organiser.

Announcement of judges' decisions

The names of the winners and the prize-winning works should be either published in the press or communicated to all participants in an agreed way, i.e. either by post or email. Organisers should ensure that winning practitioners are notified prior to the opening event to enable them to attend to receive the prize or award. They can be asked to maintain confidentiality if necessary. If winners are travelling a long distance, organisers should consider assisting with travel costs.

Media and promotion

Organisers should indicate if winners or other practitioners are expected to personally participate in any promotional activities associated with the event and state the purpose and extent of this in the conditions of entry. Practitioners should have the right to refuse to take part in such promotions.

Complimentary material for practitioners

Participating practitioners need documentary evidence of their participation in competitions, prizes, awards and fundraising exhibitions for their professional archives. Organisers should provide practitioners with copies of the printed catalogue (if any) and other materials such as reviews and media coverage can be distributed via the organiser's website or email.

6.7 Acquisitions

Many awards, prizes and competitions acquire works to be included in collections. Works are either acquired through purchase of the winning work by the gallery at the nominated selling price, or in exchange for the value of the prize.

Organisers should state clearly in the conditions of entry if work is to be acquired and exactly what type of acquisition is being offered—by purchase or by exchange for the cash value of the prize, and who or what entity will own the work. Where works are acquired in exchange for the value of the prize, organisers should only acquire works of equal or lesser value than the prize amount.

Organisers should be aware that purchase or acquisition of the work does not include automatic transfer of ownership of copyright in the work. If organisers require copyright

ownership, a licence agreement should be drawn up with the artist and separate payment made.

Practitioners with full gallery representation need to advise their gallery of any acquisitions by purchase or prize and pay the gallery commission due as outlined in their representation contract.

Acquisitions for Commercial Use

Some competitions are organised to source images for use by commercial entities for advertising purposes. In this circumstance, the value to the organiser lies in the reproduction rights to the work. Artists should beware of conditions of entry that require handover (assignment) of copyright along with the work in return for the advertised prize.

6.8 Sales and payments

6.8.1 GST

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 also 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).

If the organiser does not add GST to the prize income, e.g. 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.

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.

6.8.2 Sales

Sales of work at competitions, prizes, awards and fundraising exhibitions generate welcome income for practitioners and for organisers.

The organisers of events at which sales take place may charge no commission or a commission varying from as low as 5 percent to as high as 30 percent. More than 25 percent is rarely justified given the limited level of service provided by most organisers to the practitioner. Organisers may wish to indicate for what purpose/s income from commissions is to be used (towards future prizes, charity, acquisitions, etc.)

The ABN and GST status of both organisers and practitioners will affect the handling of payments, the taking of commission and the payment of tax. Organisers who will be selling work on a commission basis (i.e. acting as an intermediary in the sale between the practitioner and the buyer and taking a commission for this service) will be operating as a sales outlet and need to become familiar with the required tax arrangements. More information on operating as a sales outlet can also be found in Chapters 1 and 2 dealing with commercial and publicly funded galleries.

ABN/GST registered organisers are required to charge a GST component in entry and commission fees and will need to issue receipts for these costs and/or Tax Invoices for fees greater than \$75.

A GST registered practitioner is required to sell his/her work with a GST component. Since the GST is a tax that must be remitted to the Australian Tax Office, the organiser of the event should only charge a commission on the GST exclusive price. For example, a practitioner who is registered for GST sells their work through an event for \$1,100, including the art/craft/design work price (\$1,000) plus GST (\$100). The event takes a 20% commission of the \$1,000, i.e. \$200. The payment to the practitioner, with the commission removed, is therefore \$800 plus the \$100 GST = \$900. The ABN/GST registered practitioner will report the GST collected on the sale offset by the GST paid on the commission in their next Business Activity Statement.

Practitioners who are not registered for the GST will have no GST component in their retail price and organisers will charge commission on the stated value of the art work. The practitioner can later claim the commission fee as a cost of sale in the practitioner's annual income tax return.

Hobbyist practitioners should supply organisers with a 'Statement by a Supplier' in order to avoid having ABN registered organisers withhold 46.5% in Pay As You Go (PAYG) tax for each sale of their work.

Some competitions, awards and prizes are non-selling exhibitions only. Where this is the case, organisers should be willing to pass enquiries on to the practitioner or their agent.

Sales arrangements

The organiser should indicate in the conditions of entry their ABN and GST status for the information of practitioners.

The Entry Form should request that practitioners provide details of their ABN and GST registration for the information of organisers. If practitioners are not ABN or GST registered, the Entry Form should request that practitioners provide a 'Statement by a Supplier'.

The conditions of entry should clearly explain the arrangements for sales according to the tax status of the practitioner.

If the exhibition is a non-selling event the Entry Form should ask practitioners to whom sales enquiries should be directed.

Commission

The Conditions of Entry should state the percentage of commission on sales to be charged by the organiser. Organisers should charge limited commission on sales. More than 25 per cent is rarely justified given the limited level of service provided by most organisers to the practitioner.

Organisers should familiarise themselves with their own tax obligations and the taxation obligations of the various kinds of practitioners and apply commission or Pay As You Go (PAYG) accordingly.

Where participants are represented by a gallery, the practitioner must notify their gallery of participation in the award, prize, competition or fundraising exhibition and will need to pay their gallery commission on the sale of work through the organiser. The amount paid to the gallery should be jointly agreed by the practitioner and the gallery.

The total commission paid by the practitioner should remain the same, the total commission should be split between the managing parties, so the practitioner receives their full share of the retail value. For example, where a practitioner sells work through exhibiting as a finalist in an art prize, and the prize organiser charges 20 percent commission, the two managing parties would receive an agreed share of the 20 percent and the practitioner would receive the remaining 80 percent.

If the gallery agrees to forego commission, this should be considered a donation and should be appropriately acknowledged by the event organisers.

Auction reserves

Where events include an auction, practitioners (and/or practitioner's gallery representative) should be allowed to set a reserve price for the retail value of the work to ensure that the value of the practitioner's work is not undermined.

6.8.3 Payments

By purchasers

Most organisers allow deposits to be made towards the purchase of the works with full settlement at the conclusion of the exhibition. Others request full payment at the time of purchase. Organiser's financial management of sales must be accountable to artists, purchasers and the tax office.

Organisers should ensure that purchasers understand acceptable methods for, and acceptable timing of, payment for works purchased. Organisers should develop a policy on the process to be followed if a potential buyer fails to pay the balance on a work, or fails to collect a work. This information should be provided to practitioners where they are implicated in the process, and to purchasers at the time they make their first instalment payment.

To practitioners

The conditions of entry should include information about the method and timing of payments to practitioners for prizes, awards and sales of work. When providing prize money payment can be made by bank transfer or cheque. Payment for sales should be made to the practitioner within 30 days of the close of the event.

6.9 Return of work

6.9.1 Collection

The conditions of entry should explain the collection process for both selected and non-selected works, and any penalties or conditions for unclaimed work.

Non-selected works should be collected, or returned by freight, before the finalist exhibition commences.

It sometimes happens that practitioners do not collect their entries on time. Organisers may impose storage fees as an added incentive to get practitioners and their agents to be prompt in collecting work.

The conditions of entry should indicate the accepted methods for removal of both selected and non-selected work with full details of date/s, place/s and time/s. Organisers should give practitioners, their agents, couriers or freight companies reasonable time to collect the work. Collection should be allowed over at least two days, including one normal business day to facilitate collection by freight and courier companies.

Any rules regarding the early removal of work on display (prior to the end of the exhibition or event) should be stated.

Practitioners should be required to present ID when collecting works. Agents or couriers should provide evidence of their authority to collect works.

The conditions of entry should indicate whether storage fees, if any, will be charged and under precisely what circumstances. Any storage fees should be kept low. The conditions of entry should spell out the actions to be taken by the organiser to notify the practitioner before uncollected works are deemed 'unclaimed' and sold or disposed of. Organisers should allow at least six weeks for reclamation.

6.9.2 Repacking for freight

Where work is returned by freight to practitioners, organisers have a special duty of care to ensure that the work is repacked suitably for transportation. If storage for packing materials is available, organisers should aim to repack works in original packing materials as this can be crucial for insurance claims. If this is the case organisers should request that practitioners clearly label their materials so that the same materials can be used to repack unsold works.

Where organisers do not have space to store packing materials, they can arrange for a local freight company to store the packing materials for the duration of the exhibition or ask that they be taken away (either by the practitioners delivering the work, or by the agent or courier company) and then returned for collection.

If the organiser cannot guarantee that works will be returned in the original materials, there should be a guarantee that comparable professional packing materials will be used.

Chapter 7: Fees and Wages

7.1 Introduction

In Australia, visual and media arts, craft, and design practitioners are rarely covered by formal wage-setting instruments such as Modern Awards because they are generally not classified as employees. In the absence of legally-binding minimum pay rates set by the Australian Industrial Relations Commission, community standards as to what constitutes fair and reasonable pay have not evolved for these practitioners in the same way as for many other sectors. Art practitioners and employers and buyers of their work are also often poorly informed about what practitioners do and should earn.

This contributes to the struggle most practitioners have to generate sufficient income from their art. *Making Art Work*, a report commissioned by the Australia Council for the Arts revealed that for the financial year 2014-15 the average gross creative income for a visual artists was \$28,800 and the average total gross income \$47,000. (*Making Art Work: An Economic Study of Professional Artists in Australia*, Throsby & Petetskaya, 2017 p. 74).

Practitioners should be adequately paid in recognition of their essential contribution to public non-selling exhibitions. This includes payment of one or more of the following, as appropriate to the circumstances:

- Artists' loan fees to a practitioner for the loan of their own work
- Fees for the creation and/or installation of new art/craft/design work, including site specific or ephemeral work such as audio-visual and performance art, when these require the practitioner to create, install or present the work on-site
- Fees for associated lectures, talks, curatorial and administrative work as relevant
- Licensing fees for the use of images in publications or on merchandise.

Artists' loan fees and fees for the creation of new work should be seen as distinct from any other payments or exhibition costs and should not be 'traded off' against other goods or services provided by the gallery or major art event to the practitioner. Fees should be based on the relevant schedules as outlined in this section and included when developing budgets for exhibitions.

Funding bodies should mandate the payment of fees by galleries in receipt of public funding at least at the minimum recommended industry rate.

This chapter outlines a schedule of pay rates for work undertaken by artists and other arts professionals. It also highlights copyright fees as suggested by Copyright Agency, fees for reproductions of the work of illustrators and freelance and prose anthology rates published by the Australian Society of Authors and the Media, Entertainment and Arts Alliance.

Designers are referred to the Design Institute of Australia, which supplies information on industry rates of pay online to members or to non-members in hardcopy for a fee.

7.2 Contracts and superannuation

7.2.1 Short and long term contract

A major trend in employment is the casualisation of the workforce and an increase in either short or long-term contracts and contracting rates. Artists are generally hired via one-off contracts being paid flat rate fees, whilst arts workers are often hired as contractors on an hourly basis. This type of employment means artists and other contractors do not have access to paid sick, annual or long service leave. In addition they must insure themselves against accidents and professional negligence and fund their own training. A short term contract may be anything up to six months and a long term contract longer than six months.

7.2.2 Superannuation

For contractors, even those delivering one off projects, employers have an obligation to pay superannuation when employees or contractors (who are deemed workers) earn more than \$450 in any month.

The responsibility for paying the superannuation rests with the employer so contractors should not make provision for the superannuation on their invoices. The employer will accordingly need to budget for the 9.5% superannuation on the fees invoiced by each contractor where the invoice(s) value exceeds \$450 in a month.

'Deemed workers' are generally contractors who provide their personal skill and expertise usually under a personal ABN as a Sole Trader. Workers may include artists, installers, curators, photographers, workshop facilitators, etc. when more than half the dollar value of the contract is for their labour. To find out if you should be paying super, or are entitled to have super paid for you, follow this [link](#) for information and the [employee/contract decision tool](#) and [superannuation guarantee eligibility decision tool](#).

Companies who contract the services of Sole Traders as deemed workers should consider the superannuation imposed when negotiating for the provision of the required services. The deemed worker will need to complete a Superannuation Choice form so that the employer knows to which fund to remit the required superannuation for each quarter.

Contractors who invoice under a Partnership, Pty Ltd Company or as a Trust are not deemed workers as they are generally employees of the invoicing entity.

7.3 Schedule of fees for practitioners

7.3.1 Types of practitioners

Studio practitioner

A studio practitioner creates work that explores a conceptual premise or process and can use a variety of mediums including painting, sculpture, ceramics, performance and digital media.

Qualifications: The entry requirement is a bachelor degree or higher qualification or at least 5 years' relevant experience. Some occupations in this unit group may require high levels of creative talent or personal commitment and interest as well as, or in place of, formal qualifications or experience.

Skills, responsibilities and duties:

- Conceives and develops ideas for artistic presentation using guidelines from a commissioning buyer or at their own initiative for markets, organisations or galleries.
- Selects the artistic medium which can include painting, drawing, sculpture, ceramics, pottery, metals, jewellery or textiles.
- Selects, finds and prepares the materials.
- Selects and applies artistic techniques and technical skills to arrange objects, apply and/or transform materials into desired shape.
- Develops applications for funding grants and scholarships and submits work for peer review in formal refereeing processes for exhibitions.

Performance practitioner

A performance practitioner creates live work that explores a conceptual process or premise and can use a variety of mediums including installation and digital media, and is presented to an audience.

Qualifications: The entry requirement is a bachelor's degree or higher qualification or at least 5 years' relevant experience. Some occupations in this unit group may require high levels of creative talent or personal commitment and interest as well as, or in place of, formal qualifications or experience.

Skills, responsibilities and duties:

- Conceives and develops ideas for artistic presentation using guidelines from a commissioning buyer or at their own initiative for markets, organisations, galleries or any chosen venue.
- Selects the artistic medium.
- Selects, finds and prepares the performance and associated materials which can include installation and digital media works.
- Selects and applies artistic techniques and technical skills to present a live work to an audience.
- Develops applications for funding grants and scholarships and submits work for peer review in formal refereeing processes for exhibitions.

Public artist

A public artist is involved in the visual conception, planning and usually the installation of public art works.

Qualifications: Typically possess a post-graduate degree in visual arts or commensurate skills and experience. Often also holds formally recognised or informally acquired computer-based engineering skills.

Skills, responsibilities and duties:

- Undertakes independent research into the site and formulates an original design concept which addresses the brief of the tender organisation and takes into account the legal codes, technical requirements and the environmental, cultural and historical character of the site;
- Develops and presents project tenders containing costings, timetables and art models/diagrams in a competitive tendering process;
- Develops and implements appropriate consultation techniques to involve stakeholders such as the local council and the community in project development;
- Senior practitioners usually hold executive responsibility for the project and must have time, budget and people management skills. They recruit, supervise and coordinate

project workers as required and may liaise with tradespersons and sub-contractors. Project workers themselves exercise different levels of responsibility depending on factors such as the size of the project and personal experience.

- Promotes, markets and explains art work to the media, council and local communities.

Collaborations and groups

It is recommended that ideally, payment of fees and wages for collaborative groups should follow similar principles to those used in awarding grants to collaborative groups. NAVA's devolved grant scheme for example offers artistic groups double the amount awarded to single artists. It is recognised this may not always be possible within project budget constraints. However, the artists' fee should still be increased to acknowledge multiple producers.

7.3.2 Commissioned practitioner fees

For the commissioning of new work there are separate scales of fees and wages for: public art; fees for the development of new work (non-acquisition); and fees for new work (acquisition).

The term 'commissioning' is often used in a variety of contexts to refer to the mode of enabling the production of an artistic work by a client.

For example:

- Commissioning of art in the public space as addressed in *Chapter 3* of the Code refers to work created for public spaces. This can include permanent or temporary work.
- *Chapter 4* of the Code outlines special purpose commissioning and in this context the term commission refers to the method of enabling creation of work for a specific purpose such as 'one-off' special pieces, multiple copies of an original design or 'architectural projects', a term used here to cover various integrated design elements within a building project, which may be either built-in or free-standing.
- Commissioning also can refer to an art organisation requiring and paying the artist to make a new work for exhibition and then its acquisition into the organisation's collection - meaning the organisation will own the commissioned work.
- Commissioning also refers to an organisation paying the artist to produce a new work for exhibition only. In this instance the organisation is supporting the development of new work.

The scales of fees and wages in this Code recognise these differences and establish scales to ensure organisations are paying a flat fee to the artist known as an 'artist fee.' Separately a production fee is to be paid which covers material costs, production costs, installation costs and technical costs. Artist fees and production fees should be commensurate with the purpose, function, scale and size of the particular commission.

When establishing an artist fee, galleries should take into account the calibre of the artist, the size and calibre of the work, the number of artists involved and the estimated return on the work with regards to ticket sales or audience participation (for performance events).

New work (non-acquisition)

The scales of fees and wages take into account career stage, type of work, and the size of the organisation to establish the flat rate for an artist fee towards the development of new work (non-acquisition). This artist fee is separate from and does not include the payment of production costs.

Flat rate artist fee solo show, new work (non-acquisition)

The schedule below is based upon calculating a one artist, single venue rate for publicly funded galleries and museums who have an operating budget of less than \$1 million and less than 20 full time staff.

Larger organisations of more than \$1 million with over 20 full time staff should be budgeting accordingly and paying higher artist fees commensurate with their organisational size.

Larger galleries (venues) with multiple exhibition spaces should also ensure that each exhibition is treated separately in the calculation of artist fees. Therefore, a gallery with three concurrent solo artist exhibitions should pay the appropriate artist single venue rate to each solo show practitioner.

These fees should be seen as a **minimum** standard. Higher profile or more established practitioners, as well as practitioners showing in higher profile or better resourced public galleries, should be able to negotiate higher fees.

Performance rates are exclusively for performance work. When an artist has been commissioned to present a solo exhibition which includes both a body of studio work plus separate performance work, they should be paid fees for both components.

These fees do not include production costs that should be calculated in addition to the artist fees set out below.

TABLE 1

	Early career	Mid-career	Established
Studio Artist	\$2,018	\$2,564	\$3,478
Performance (one-off event)	\$748	\$1,528	\$2,247
Performance (ongoing as part of an exhibition)	\$1,123	\$2,246	\$2,995

Publicly funded Artist Run Initiatives (ARIs) operating on much smaller budgets, in relatively smaller spaces, are encouraged to refer to the rates below for the payment of artist fees.

TABLE 2

	Early career
Studio Artist	\$500 – \$1,000
Performance (one-off event)	\$200 – \$500
Performance (ongoing as part of an exhibition)	\$500 – \$1,000

Flat rate artist fee group show, new work (non-acquisition)

The schedule below is based upon calculating more than one artist, single venue rate for publicly funded galleries and museums with an operating budget of less than \$1 million and less than 20 full time staff.

Larger organisations of more than \$1 million with over 20 full time staff should be budgeting accordingly and paying higher artist fees commensurate with their organisational size.

These fees should be seen as a **minimum** standard. Higher profile or more established practitioners, as well as practitioners showing in higher profile or better resourced public galleries, should be able to negotiate higher fees.

Performance rates are exclusively for performance work. When an artist has been commissioned to present both studio work plus separate performance work, they should be paid fees for both components.

These fees do not include production costs that should be calculated in addition to the artist fees set out below.

TABLE 3

	Early career	Mid-career	Established
Studio Artist	\$1,009	\$1,282	\$1,739
Performance (one-off event)	\$374	\$764	\$1,124
Performance (ongoing as part of an exhibition)	\$897	\$1,123	\$1,498

New work (acquisition)

For the development of new work (acquisition) the fee should be calculated at the hourly rate for Public Art and Special Purpose Commissioning or be equal to the market value of the work. Production costs are not included in this fee and should be negotiated in addition to the fee.

Artist fees for public art and special purpose commissioning, new work (acquisition)

For public art commissions and special purpose commissions where the work is to be acquired by the commissioner the hourly rate below should be applied. This rate does not include the payment of production costs, which should be negotiated in addition to the fee.

These fees should be seen as a **minimum** standard. Higher profile or more established practitioners, as well as practitioners creating large scale work both permanent and temporary in higher profile areas, should be able to negotiate higher fees.

TABLE 4

	Permanent	Casual (25% loading)	Self-employed short-term contract	Self-employed long-term contract
Senior Practitioner	\$68.36	\$85.45	\$135.07	\$112.56
Mid-career	\$56.97	\$71.21	\$112.56	\$93.80
Minimum/Trainee	\$25.73	\$32.17	\$50.85	\$42.38

For information on how rate is derived see Methodology 7.14.

7.3.3 Practitioner fees hourly rate

The below rates can be used as a basic hourly rate where a flat rate is not applicable. For example, these rates could be used for a period of development or research which the practitioner is being funded to undertake. Rates can also be used to calculate residency fees where the residency does not include the commissioning of new work. Rates can also be used as a general administration rate where a practitioner is paid an additional fee for extra work being requested beyond what is covered by a flat fee.

TABLE 5

	Permanent	Casual	Self-employed short-term contract	Self-employed long-term contract
Senior practitioner	\$57.96	\$69.54	\$114.52	\$95.43
Mid-career	\$42.93	\$51.51	\$84.82	\$70.69
Minimum/trainee	\$23.94	\$28.73	\$47.30	\$39.43

For information on how rate is derived see Methodology 7.14.

7.3.4 Artist loan fees

Artist loan fees are paid to practitioners for the loan of their existing work to a public gallery or major event in a non-selling exhibition. These fees are paid in recognition of the value being provided to the public, and the potential loss of income to practitioners while their work is on loan for a short or long-term exhibition and not available for sale. The fee relates to work borrowed from the practitioner directly, and not to work borrowed from a collector.

It should be noted that if a work is borrowed from a collector or as an inter-gallery/museum loan the artist should be notified that their work will be included in the exhibition to ensure the gallery/museum is adhering to moral rights requirements.

The schedule below is based upon calculating one artist, solo show, single venue rate and deriving multiple venue, multiple artist rates from it. For group shows, divide the total fee by the number of artists (up to 10 artists). CPI has been added to the \$2,300 proposed in 2009 to reach the listed figures. These rates do not include transportation of the work.

These fees should be seen as a **minimum** standard. Higher profile or more established practitioners, as well as practitioners showing in higher profile or better resourced public galleries, should be paid higher fees.

Larger galleries (venues) with multiple exhibition spaces should ensure that each exhibition is treated separately in the calculation of artist loan fees. Therefore, a gallery with three concurrent solo artist exhibitions should pay the appropriate single artist single venue rate to each solo practitioner. When an exhibition goes on tour to multiple venues the loan fee is usually paid by the exhibition organising body as a flat fee based on the length of time of the tour.

TABLE 6

Single Venue Up to 2 months	Multi venue or extended exhibition 2 to 12 months	Multi venue or extended exhibition 12 - 24 months	Multi venue or extended exhibition 2 years +
\$2,868	\$5,737	\$7,793	\$8,603

Note: For group shows, divide the total fee by the number of artists (up to 10 artists) i.e. \$287 to be paid to each artist if a group show has 10 or more artists.

7.4 Copyright fees

Practitioners can choose to license reproductions of their own work or use a rights management service, such as that offered by [Copyright Agency](#). If a practitioner wants to manage their own copyright licence agreements can be purchased from the [Arts Law Centre of Australia](#).

When licensing work, it is important to understand exactly how the work will be reproduced and have a clear agreement in writing. The amount charged for the licence will vary depending on how the work is to be used. Commercial projects tend to attract higher rates than uses by not-for-profit organisations or galleries.

Some important points to consider when deciding how much to charge:

- Total number of reproductions (e.g. print run of books).
- Size of the work when reproduced (e.g. A4, half page, quarter page).
- Duration of the licence (e.g. a one-off project, annual licence or indefinite).
- Distribution territory of the reproduction (e.g. Australia only or world-wide).
- Extent to which integrity of the art work is maintained (e.g. will the work be reproduced in full or as a detail? Will the colours be true to life? Will there be any overprinting or cropping of the image?).
- Right to approval of the layout and details.
- How the work will be attributed and where (it is best to provide the customer with a copyright sentence in the agreement).
- Number of sample copies the copyright holder wishes to receive.
- Granting of non-exclusive rights.
- Granting of third party licences.

It is important to understand the full scope of any use or project before licensing copyright and also to ensure the licence agreement covers all aspects. For example, if the licence is for the reproduction of work to be printed on T-shirts, the licence may need to include not just terms for the T-shirt print reproduction but any other associated reproductions which may feature on the packaging, retail displays, print and online advertising.

Other issues to consider include re-prints, differences in wholesale and retail pricing, manufacturing time frames and whether the royalties are to be based on the size of the print run or the number of items actually sold.

All parties to a licence agreement should agree and be clear about all definitions in the licence, before commencing.

The below rates have been reproduced from the [Copyright Agency](#).

TABLE 7

Books distributed in Australia only, interior use, print run of 2000 copies	Rates start at \$100 + GST for an interior thumbnail reproduction in a book with a print run up to 2,000 copies, and \$750 + GST for cover use. Rates increase for higher print runs. Some discounts apply, including for educational text books and using multiple artworks (more than 5 images in one publication). Monographic publications are generally charged at a percentage of the sale price.
Brochures, gallery guides, annual reports, catalogues, leaflets and flyers, ½ page reproduction, print run of up to 1,000 copies	Editorial use (annual reports, gallery guides, exhibition brochures) \$200 + GST per image Advertising use (catalogues, leaflets, flyers) \$400 + GST per image. Rates increase for larger image size and higher print runs.
Digital broadcast, film, TV	Rates start at \$200 + GST for an Australian documentary. Commercial and advertising rates are higher.
Merchandise e.g. mugs, clothing, etc	25% - 30% of the wholesale price, or 15% to 20% of the retail price. An initial fee should be paid on the outset of the licence being issued.
Commercial billboards, banners, advertising posters	Billboards 1-10 sites, two weeks duration, \$1,140 + GST. Banners, posters up to 6m ² , three month duration \$1,270 + GST.

Internet use including social media and apps	\$100 + GST per work, for 1 – 5 works on a website for a year. For 11 – 50 works the fee is \$50 + GST per work.
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7.5 National freelance rates

The below tables are reproduced from the Media, Entertainment and Arts Alliance. In order to update these rates a CPI increase has been added.

Freelance writer

TABLE 8

Per day	\$1,028
Per half day (2/3 day rate)	\$685
Per hour	\$257
1000 words or less	\$1,045
96c per word thereafter	

Photojournalist or videojournalist

TABLE 9

Per day	\$1,281
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Photographer

TABLE 10

Per day	\$1,028
Per half day (2/3 day rate)	\$685
Per hour	\$257
Research (per hour)	\$194

Book editors and proofreaders

TABLE 11

Per day	\$1,028
Per half day (2/3 day rate)	\$685
Per hour	\$257

Public relations (promoting art and artists)

TABLE 12

Senior PR Consultant per day	\$1,489
Per hour	\$195

7.6 Illustrator and writer fees

The below rates have been reproduced from the [Australian Society of Authors](#). These fees should be seen as a **minimum** standard.

7.6.1 Book illustration

The below rates apply to A4 size projects. Rates should be increased depending on size, detail and research required. For one off or single illustrations paid on a flat fee without royalties add 20%.

Roughs

TABLE 13

Black and white	\$65
Colour	\$95

Black and white

TABLE 14

Quarter page or chapter head	\$215
Half page	\$340
Full page	\$455
Double page spread	\$575

Colour

TABLE 15

Quarter page or chapter head	\$300
Half page	\$475
Full page	\$675
Double page spread	\$900
Cover	\$1,300

7.6.2 Prose anthology

First publication

TABLE 16

Per line	\$3.13 (title counts as a line)
Up to 40 lines	\$125
41 - 60 lines	\$188
61 - 90 lines	\$281
91 - 135 lines	\$442
136 - 200 lines	\$625
201 - 300 lines	\$938

Previously published material

TABLE 17

Number of lines ———>

	10	15	20	30	40	50
250	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00
500	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00
1000	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00
1500	\$58.00	\$58.00	\$58.00	\$58.00	\$74.00	\$92.00
2000	\$58.00	\$58.00	\$58.00	\$74.00	\$98.00	\$123.00
2500	\$58.00	\$58.00	\$58.00	\$92.00	\$123.00	\$153.00
3000	\$58.00	\$58.00	\$74.00	\$110.00	\$147.00	\$184.00
3500	\$58.00	\$64.00	\$86.00	\$129.00	\$172.00	\$215.00
4000	\$58.00	\$74.00	\$96.00	\$147.00	\$196.00	\$245.00

Number of copies ↓

Alternatively, editors and poets could share a one-off payment of 12% of the RRP of the edition times the print run. For example, 2% of the RRP might be attributed to the editor/s and 10% be attributed proportionately to the poets: 10% of the RRP times the size of the print run would be divided by the number of poems in the anthology in order to produce a dollar value for each poem; and then each poet would receive a sum based on the number of their poems appearing in the anthology (a sequence being counted as the total of the number of poems within it).

7.7 Teaching and presenting

7.7.1 Public appearances and presenting

The below rates have been reproduced from the [Australian Society of Authors](#). These fees should be seen as a **minimum** standard.

TABLE 18

One off appearance e.g. artist talk, speaker	\$350
Panel member	\$200
Panel facilitator (with more preparation involved)	\$250
Key note address	\$1,000

7.7.2 Workshops and classes

The below rates have partially been reproduced from the [Australian Society of Authors](#) and from NAVA research. If being paid an hourly rate for a workshop preparation and materials sourcing time needs to be accounted for. Generally the minimum paid for a one hour workshop should be \$200. The below rates also do not include reimbursement for materials for the workshop of travel expenses if required. These fees should be seen as a **minimum** standard.

TABLE 19

Hourly rate	\$100
Half day	\$550
Full day	\$880

7.7.3 Teaching at universities

The rates of pay paid by Australian universities were used to establish this table. However, wage rates within universities are negotiated on the basis of enterprise agreements and therefore there are a number of variables that come into force when establishing a rate.

Many universities now have their salary rates online. In such cases it would also be possible for the practitioner to look up the rates being paid by a university within the practitioner's geographic area and to determine a rate that most closely matches the conditions of the engagement and the practitioner's experience and training.

Where a university has its pay rates online but does not show hourly rates the practitioner can determine a fee by looking at the yearly salary for a position which matches the practitioner's training and experience, adding a casual loading of around 25%, then dividing by the number of working weeks in the university year, e.g. 38, and then again divided by the number of hours per week e.g. 37.5.

In the following table, the average of wage rates for casual academic staff on a one-off and repeat basis for lecturing and tutoring has been determined from a randomly-chosen group of Australian universities which have their casual (hourly) salary rates online. The rates below are based on a 'normal' or 'standard' one hour lecture, or tutorials done by someone who doesn't have a doctoral qualification. Lectures by 'distinguished' lecturers or tutorials by people with doctoral qualification are paid at higher rates. The lecture or tutorial fee also encompasses both the one hour presentation and between 1 and 3 hours preparation time.

TABLE 20

Casual 1st time lecturing	\$196.25
Casual repeat lecturing	\$130.83
Casual 1st time tutoring	\$146.78
Casual repeat tutoring	\$97.85

7.7.4 Mentorships

Mentorships can be undertaken as a formal facilitated process with expected outcomes or an informal professional relationship that can develop between artists, arts workers and other professionals and people with specialist skills. The type of relationship and expectations of those involved will determine if a financial transaction should take place. In a formal facilitated situation a fee should be paid, in an information relationship any fee should be by negotiation. If a fee is to be paid this should be in-line with the workshop rates listed at 7.7.2 above and agreed upon by all involved parties.

7.8 Judging awards, prizes and competitions

The below rates are to be paid to judges asked to review submission material for an award, prize, competition or grant. These rates should be paid in addition to travel expenses and per diems.

TABLE 21

Whole day (max. 6 hours)	\$580
Half day (max. 3 hours)	\$406

7.9 Travel expenses and per diems

Travel, accommodation and meal costs should be either reimbursed or paid at the below rates when requesting a practitioner or arts worker to make a public appearance, attend a meeting or is acting as a judge.

The below rates are specified by the [Australian Taxation Office](#).

TABLE 22

Accommodation domestic (overnight)	\$200 per day (this is an average cost as the ATO specifies different rates depending on your salary and the State you are staying in).
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Accommodation international	The ATO specifies different rates depending on your salary and the country you are staying in. You should be paid this rate in AUD at the exchange rate either at time of travel if working for an organisation or on submission of an invoice.
Meals	\$129 per day
Subsidy for use of own car	Up to 68c per km
Allowance for travel time (2-6hrs)	\$50 per hour
More than 6 hours travel time	\$300

7.10 Curator and exhibition designer fees

7.10.1 Independent curator

A museum or gallery curator usually specialises in a broad discipline, including contemporary art, anthropology, fine art, decorative arts, natural history, social history, science or technology, and within that discipline they are generally recognised as authorities on one or more specific subject areas possessing extensive critical and historical knowledge and community engaged experience.

Qualifications: Typically possess a bachelor's degree or higher qualification. Qualifications can vary, with several permanent curators often holding higher qualifications, either an honours degree or higher. Local labour market factors (such as location/region) as well as the size of the employing institution are used in conjunction with the degree of experience and/or expertise of a curator to distinguish the more senior curators.

Skills, responsibilities and duties:

- Conceive and implement an exhibition, festival or public event. This will include, but is not limited to:
 - developing a curatorial premise
 - artist selection and engagement
 - exhibition design
 - catalogue essay
 - installation management
 - planning and logistical management
 - contributions to marketing and publicity
- Acquire items for the collections in their care
- Examine items to determine condition and authenticity
- Identify and classify specimens, and arrange conservation and restoration work
- Keep and maintain records about all items in the collection
- Organise and participate in display teams which may include travelling or arranging for loan exhibitions

- Initiate and maintain research and publication programs, and establish networks and assist other professionals on request
- Lecture and write about the collections, and answer public enquiries
- Supervise support staff and organise administrative duties associated with the use and care of the collection.

Normal business practice dictates that quotes for service include estimated labour hours and cost. The arts industry should follow normal business practice in this regard. Agreements between curators and galleries should proceed from an estimation of the length of time a curator will take to conceive, develop and produce the exhibition, write any support materials including catalogue texts, contact and talk to media and deliver talks and lectures.

The tables of rates published below estimate fees for ‘minimum’, ‘standard’ and ‘senior practitioners’, to reflect ‘modest’, ‘average’ and ‘high’ profile exhibitions, respectively. This assumes that curators’ expertise increases with the complexity and profile of a proposed exhibition. Short and long term rates distinguish between smaller and major exhibitions requiring shorter or more extended commitments from the independent curator. These fees should be seen as a **minimum** standard.

TABLE 23

	Short term hourly contract rate	Long term hourly contract rate
Senior practitioner rate/High profile exhibition	\$110.62	\$92.17
Standard rate/Average profile exhibition	\$79.72	\$66.44
Minimum rate/Modest profile exhibition	\$67.27	\$56.07

For information on how rate is derived see Methodology 7.14.

7.10.2 Exhibition designer

An exhibition / product designer develops concepts, products and artwork drawing on research and development activities.

Qualifications: Typically possess a bachelor’s degree or higher qualification or at least 5 years’ relevant experience. Some occupations in this unit group may require high levels of creative talent or personal commitment and interest as well as, or in place of, formal qualifications or experience.

Skills, responsibilities and duties:

- On behalf of an artist, develops an art installation for exhibition and/or commercial products. Examples of work produced by this category include 3D audio-visual installations exhibited in galleries, animation and/or software/hardware applications.
- Provides advice on research and development options available to the organisation or commissioner.
- Brokers, develops and coordinates multi-disciplinary research teams which may integrate individual artists and networks of artists with research & development specialists from other fields.

- Develops and implements programs of research projects to support commercial or policy objectives.
- Applies audio-visual artistic skills and methodologies in conjunction with specialists from other fields as part of research and development projects which may develop synergies between the arts and other fields such as engineering & computing.

These fees should be seen as a **minimum** standard.

Hourly rate for commissioned exhibition designers

TABLE 24

	Permanent	Casual	Self employed short term contract	Self employed long term contract
Senior Practitioner	\$75.55	\$90.68	\$149.33	\$124.48
Mid-career	\$44.90	\$53.87	\$88.72	\$73.94
Minimum/Trainee	\$25.23	\$30.28	\$49.87	\$41.56

Flat fees for commissioned exhibition designers

TABLE 25

Early career	Mid-career	Established
\$2,767	\$3,183	\$3,923

For information on how rate is derived see Methodology 7.14.

7.11 Installer fees

Based on qualitative interviews undertaken by NAVA in 2016, the average rate paid for installers is between \$25.75 – \$55 per hour depending on the organisation size and installer experience.

7.12 Life model fees

Based on a study undertaken by NAVA, the average rate paid for life models is between \$25.75 – \$55 per hour depending on the model's experience and requirements of the project. Most organisations surveyed paid on an hourly basis only and did not specify any daily or bulk rates.

7.13 Arts administrator salaries

Arts administrator wages were originally determined independently by the Australian Centre for Industrial Relations Research and Training (ACIRRT), University of Sydney, using data

gathered in late 2003 from an emailed survey of arts administrators working nationwide in art and craft organisations.

For the previous editions of the Code, the wage rates have been increased by CPI. In 2015 NAVA surveyed a range of arts organisations to update the ranges for Arts Administrator salaries. This research again excludes outlying data where staff salaries in large organisations would affect the average results disproportionately and are not representative of the majority of the sector. This has been supplemented by research into advertised position rates and an average range selected.

The schedule is presented in five levels with intermediary clerical, sales and service positions being the lowest and managers being the highest. Each level is accompanied by a job description or descriptions typical of that level. Wages are expressed as bands and can be used as a basis for seniority-based pay rises within the bands. There is also evidence that smaller, especially regional or community-based organisations do not have the resources to pay as well as larger urban-based organisations, and hence the band can also be seen as a capacity-to-pay variation.

Organisation size is based on the number of effective full-time (EFT) staff. This term is used where several part time staff are employed: for example, if an organisation had one full-time staff member, and two part-time staff members who each did a 0.5 workload, that organisation would have two effective full time staff.

These annual rates in this table do not include superannuation (typically 9.5% of annual gross), car or other benefits. In general, directors in large organisations, and regional and community liaison officers and managers responsible for large regional areas, receive a car allowance. Standard benefits for all permanent employees include sick leave, holiday leave, maternity leave with a loading after 12 months service (typically around 17.5 per cent), paid public holidays and long service leave.

Director

Directs the operations of an organisation for the achievement of policy and objectives.

Skills, responsibilities and duties:

- Oversees the implementation of governance, policies and directives under the broad direction of the Board (where mandated).
- Develops organisational vision, artistic vision and program and organisational values.
- Facilitates development, management and revision of organisation policies (where mandated).
- Responsible for broad strategic planning of future projects.
- Financial strategic planning, including sponsorships and manages and coordinates organisational budget.
- Liaises and consults with the community, individuals and organisations about programs and policies.
- Provides expert advice to key stakeholders.
- Appoints and manages staff, including work performance, training and development.
- Publicly represents the organisation.

Salary: \$67,502 – \$190,808+ /yr depending on number of EFT staff.

Small (1–3 EFT staff): \$67,502 – \$88,390

Medium (3–7 EFT staff): \$88,390 – \$114,403

Large (7+ EFT staff): \$114,403 – \$190,808+

Senior managers

Senior coordinating or managerial role utilising specialist and/or technical knowledge; some strategic input.

Typical job titles: General Manager, Senior Curator, Senior Project Manager, Senior Program Manager, Regional Manager, Exhibition Manager, Business Manager.

Qualifications: Usually holds a higher education degree or advanced diploma.

Skills, responsibilities and duties:

- Devises and manages organisational priorities including governance, program and financial management, staff and project planning.
- Devises and manages multiple programs and partnerships. May be regional in scope in large organisations.
- Oversees all aspects of planning & executing exhibitions; supervises all exhibition staff.
- Supervises Program or Project Officers.
- Oversees community, outreach or audience development officers.
- Develops new audience and/or community involvement strategies and oversees implementation.
- Develops grant applications, responsible for payroll, databases, library; supervises administrative staff.
- Researches, analyses, develops & evaluates arts initiatives and policy options.
- Manages grant application and assessment processes and provides specialist services and information to grant applicants.
- Prepares papers and delivers information sessions and briefings on behalf of the organisation.
- Provides expert advice to a range of constituents and other stakeholders on policies and strategies.

Salary: \$52,500 – \$105,000 /yr depending on size of organisation, and size of staff supervised.

Small (1–3 EFT staff): \$52,500 – \$60,000

Medium (3–7 EFT staff): \$60,000 – \$75,000

Large (7+ EFT staff): \$75,000 – \$105,000 depending on mix of responsibilities and region to cover.

Specialist middle managers

Middle managerial roles with supervisory duties and technical or specialist skills.

Typical job titles: Program Co-ordinator, Program Officer, Project Officer, Gallery Manager, Exhibition Officer, Community Outreach Officer, Audience Development Officer, Finance Officer, Retail Sales Manager.

Skills, responsibilities and duties:

- Coordinates programs and projects on behalf of the organisation
- Assists the visual arts community in making effective applications for grants by providing information, advice and support.
- Provides information on issues concerning the visual arts/ community for the development of policy.

- Ensures the efficient operation of grant programs by processing applications, recording decisions, organising payments and acquittals.
- Occasionally addresses community groups about policies and programs and represents the organisation in public forums.
- Prepares policy papers to maintain the quality of programs.
- Responsible for day-to-day operation of gallery and/or exhibition and supervision of staff and volunteers.
- Responsible for development and day-to-day operation of audience and community outreach/involvement programs.
- Responsible for day-to-day administration and development of organisation's financial systems and procedures.
- Responsible for day-to-day operation of retail outlet and supervision of retail sales staff.

Salary: \$52,500 – \$90,465 /yr depending on size of organisation and exact mix of responsibilities.

Small (1–3 EFT staff): \$52,500 – \$60,000

Medium (3–7 EFT staff): \$60,000 –\$67,502

Large (7+ EFT staff) (also Community Outreach or Audience Development Officer): \$67,502 – \$90,465 depending on mix of responsibilities and size of audience.

Administrative staff

Largely administrative roles conducted under supervision.

Typical job titles: Assistant Program Officer, Assistant Project Officer, Administrative Assistant, Personal Assistant, Information Officer.

Skills, responsibilities and duties:

- Web design, maintenance or administrative support to art administrators levels 1–3 (Director, Senior Managers and Specialist Middle Managers, see above).
- Assists other staff with projects
- Provides information about organisation to public upon request. Prepares basic promotional materials.
- Administers applications and funding including assessing eligibility on published criteria, evaluating and approving grants payments and acquittals.
- Provides feedback to unsuccessful grants applications about the appeals and handling client complaints.
- Researches, develops and manages strategic initiatives.
- Prepares papers and publications to advocate programs.
- Processes approved variations to grants contracts, projects conditions and timeframes.
- Actively participates on cross-functional working parties and teams.

Salary: \$42,283 – \$67,500 /yr depending on size of organisation and exact mix of responsibilities.

Small (1–3 EFT staff): \$42,283 – \$52,500 + \$7,499 if payroll tasks

Medium (3–7 EFT staff): \$52,500 – \$60,000 + \$7,499 if payroll tasks

Large (7+ EFT staff): \$60,000 –\$67,500 + \$7,499 if payroll tasks

Trainee and casual staff

Skills and responsibilities and duties:

- As determined by traineeship.
- Administrative duties under supervision.

- Organisational, gallery and exhibition duties as directed.
- Box office and front of house duties as directed
- Retail sales under supervision.
- Specialist services such as accounting, bookkeeping, editing, graphic design.

Salary:

Trainees: approx. \$33,395 /yr or as mandated under National Training wage.

Casuals: \$27 – \$30/hour.

Specialist services rate to be determined by specialist.

7.14 Methodology

The Code of Practice is currently undergoing a major revision. In the interim it is recommended to use the rates as currently listed. Rates have a CPI increase added to ensure that they remain as current as possible while research is being undertaken.

Minimum/trainee rates

Minimum hourly rates for practitioners were derived from the relevant award covering the comparator occupations.

Mid-career rates

As only one-third of employees on average are paid exactly the minimum award rate, it is also necessary to add other pay grades to reflect the higher rates of pay earned by the other two-thirds of employees who receive an over-award payment or are covered by a registered collective or individual agreement. Typically, this level would require an employee to have around five year's experience.

Senior practitioner/ established rates

The advanced or premium rate was derived by applying a premium to the standard rate. The premium was determined by calculating equivalent difference in rates between the 'standard' and 'senior practitioner' rates in the 2004 report for each relative occupation. The pay rate should be regarded as a minimum for a senior practitioner. Typically, this level would require an employee to have around 10 or more years of experience.

Artist fees for public art and special purpose commissioning, new work (acquisition)

The minimum rate is based on the entry level for a graduate architect in the Technical Services – Architects - Award (AW801194) – rates as at end of 2008.

Due to the lack of accessibility of the ABS unpublished data, the senior practitioner rate was instead derived by applying a 20% premium onto the 'mid-career' rate for a public artist. This was the equivalent difference in rates between the 'standard' and 'senior practitioner' rates in the 2004 report. This has then had CPI applied to it to derive the current 2017 rate.

The 'mid-career' rate in this report was initially derived using published ABS data from the EEH survey 2006, however the 2004 report relied on unpublished data from the ABS EEH survey 2002. Comparing the 'unpublished' data with 'published' data effectively means there is no consistent comparator, consequently producing an anomaly. The rate in this report is derived by applying a percentage increase to the public artist's rate prescribed in the 2004 report.

Practitioner fees hourly rate

NAVA notes there are different circumstances and situations where an hourly rate will be

preferred over a flat fee and vice versa. Hourly rates from the original 2004 - 2009 Code have recently been added to this current version as interim reference in response to feedback following a series of sector roundtables as part of NAVA's Fair Pay for Artists campaign in 2017.

The minimum rate is derived from the Senior Finished Artist Classification – one level above the trade rate for a Finished Artist – in the Commercial and Industrial Artists Award (AT772248)

The ABS Employee Hours and Earning Survey has moved from 2nd edition of ASCO occupational codes to the new ANZSCO codes. The standard rate is now derived from using ANZSCO 2110 Arts professionals (previously ASCO code 253 Artists and related professionals)

Due to the lack of accessibility of the ABS unpublished data, this rate was instead derived by applying a 35% premium onto the 'standard' rate for a Studio Artist. This was the equivalent difference in rates between the 'standard' and 'senior practitioner' rates in the 2004 report.

Independent curators

The research on the range of artists fees and the Independent Curators Fees was commissioned in 2009 from the Workplace Research Centre (WRC), University of Sydney. The research developed a schedule of pay rates through a benchmarking exercise against jobs of comparable worth covered by formal wage setting regulators. Annual salaries were divided by 1,000 hours for short term rates and 1,200 hours for long term rates.

Exhibition designers

Minimum hourly rate is for Graduate Information Technology Employee taken from Information Technology Industry (Professional Employees) Award 2003 (AT812962CAV) - rates as at end of 2008. The rate should be taken as a minimum. Standard rates are based on APESMA's Australian Computer Society 2009 remuneration survey data.

Level 2 Median Base Salary (Annual salary is then converted to an hourly rate- based on a 38-hour working week). Senior practitioner rates are based on APESMA's Australian Computer Society 2009 remuneration survey data.

Level 4 Median Base Salary (Annual salary is then converted to an hourly rate- based on a 38-hour working week).

Rates will vary from the 2004 update as this data does not incorporate information from the Digital Labourers Federation as it is no longer available.

Installers and life models

This study had a limited response rate and therefore all amounts are to be used as a guide.

Flat fees

In 2013 – 2015 NAVA reviewed via qualitative sector interviews, how artists were paid and how the previous benchmark hourly rates were used. From this research NAVA designed a national sector survey aimed at identifying the factors that may affect the payment of fees and the variation in current rates paid to artists.

Respondents to the survey conducted in 2016, included those drawn from each area of the visual arts and craft sector accessing data from major museums and galleries, regional galleries, contemporary art spaces, artist run initiatives, craft and design centres and university galleries.

The scales of flat fees and wages for new work production was calculated from the average of survey responses, excluding data outliers: a very small number of institutions (1.7%) who pay significantly higher fees for commissions or solo exhibitions. The averages were then measured against the industry awards for occupational comparators for artists. Flat fees were

determined as a minimum allowance of 3 weeks, full time work equivalent at the comparative industry award rates. Early career and mid-career Studio Artists rates have been benchmarked against Level 1 and Level 8 in the Graphic Arts, Printing and Publishing Award 2010, the established or late career Studio Artists rate has been calculated from Level 3 in the Professional Employees Award 2010. This is based on a minimum level of qualification and experience under each category. Rates for Group exhibitions are half the rate for a solo exhibition. Performance artist rates have been calculated from the Live Performance Award 2010, starting at a base allowance for one artist in a one-off event in a group show at the casual rate for a 3-hour performance. The base allowance for one artist in a one-off event in a solo show is calculated at the casual rate for 6-hours. Exhibition / Product Designer rates have been calculated under the Professional Employees Award 2010 starting at Level 1, Graduate Professional, pay-point 1.1 (4 or 5 year degree) for early career, Level 2 for mid-career and Level 4 for established.

The scales of fees and wages for public art, special purpose commissioning, loan fees and arts workers' salaries initially set out in this Code in the 2004 edition have had an annual CPI increase of three percent applied. This has then been reviewed against publicly advertised rates to establish the benchmark rates for these areas.

Chapter 8: Intellectual Property and Other Practitioner Rights

8.1 Intellectual property

The term 'intellectual property' or 'IP' refers to the property rights that arise in the outcomes of creative and intellectual processes, such as artworks, designs and inventions. These rights are legal tools that practitioners can use to protect their work from unauthorised use, build and protect their reputation or brand, and generate income. It is crucial that all practitioners understand how intellectual property applies to creative work so that they can protect their own interests and avoid infringing the rights of others.

8.1.1 Types of intellectual property

Some types of intellectual property, such as copyright and moral rights, apply automatically from the time of creation and to almost all forms of creative work. Other types, such as designs, patents, trade marks and trade secrets – also known as 'industrial property' – are created by a practitioner's additional activity, such as use or secrecy, or applying for registration or publication. These are usually used to support commercial activity.

Copyright refers to a set of rights relating to the reproduction, publication or communication of the work that can be sold or licensed. Moral rights are the right to be acknowledged as the creator of the work, and the right to prevent the work from being altered without permission.

Depending on their practice, a practitioner may use only a few forms of intellectual property or the entire suite. For example, a visual artist working in the medium of painting and represented by a gallery might rely almost entirely on copyright and moral rights. Whereas an artist with a new media practice creating an immersive environment might develop innovative software with commercial and/or therapeutic applications and might choose to patent it, thereby sharing the technological advance in exchange for the right to prevent others from using it.

A practitioner entering into an arrangement with a gallery for a range of merchandise would need to consider copyright and moral rights, as well as whether it would be necessary to register the designs of the products as a means of preventing others selling products that look the same; whether they need to register the word or phrase under which it is marketed as a trade mark; and also how they keep their technical and business information confidential as they work with others. A designer creating multiples should also consider these factors; and a practitioner making works for international distribution, whether on an industrial scale or one-off pieces for sale via an online marketplace, should consider these issues with an international perspective.

All practitioners working or exhibiting internationally, or presenting their work online, should understand that IP law varies from country to country, and also that IP extends to the way that you promote your product. It is critical therefore that visual artists, designers and craft practitioners understand the various forms of intellectual property, how they might apply to their practice, and when to seek professional advice. For that reason, each of the forms of

intellectual property is introduced in the Code, with users then referred to more extensive discussion externally.

8.1.2 The purpose and context of IP

The purpose of Intellectual Property protection is to encourage creativity and innovation by allowing people who invest their time creating new works and products to prevent their work from being copied by others and to generate income from them. The patents system is also designed to build the body of publicly available knowledge. The World Intellectual Property Organization (WIPO) states that Intellectual Property ‘provides the legal framework of ethical conduct to enable orderly using or sharing of knowledge’ (World Intellectual Property Organization, [Marketing Crafts and Visual Arts: The Role of Intellectual Property. A Practical Guide](#), ITC/WIPO, Geneva, 2003, p. 15)¹. Some argue however, that creativity and the creative industries (if not capitalism) are better served by freer use of others’ work.

Practitioners need to be aware of and respectful of other practitioners’ rights and also need to have a strategy to protect their own. For those seeking to earn money from their practice, it makes sense to develop an intellectual property strategy within their business plan. WIPO suggests integrating IP strategy throughout all stages of the business cycle – setting out an extensive methodology for craft and design practitioners and identifying smart tactics for visual artists, such as researching the IP protection for their works in any country to which they invited.

However, practitioners can observe others’ rights and protect their own even if they are not in full agreement with the system. ‘Copyleft’ is an organisation, symbol and system by which creators permit others to reproduce, adapt or distribute their work provided that the user then allows others to reproduce, adapt or distribute the resulting work on the same basis. The organisation Creative Commons has published a number of free agreements that creators can use to provide blanket permission for some uses of their work at the same time as reserving others.

Practitioners conscious of the influence of others on their work or engaging in the artistic strategy of appropriation should read the Arts Law Centre of Australia Factsheet [Appropriation Art: An overview of copyright and consumer protection for artists.](#)

8.2 Copyright

8.2.1 Copyright explained

Copyright law is governed by *Copyright Act 1968* (Cth), operating nationwide. This Act and subsequent amendments gives practitioners control over the reproduction of their work. This includes all artistic creators, not just those who may consider themselves ‘professional.’

Copyright is a set of rights which exists for a certain period of time in a range of different types of ‘artistic works’, including paintings, drawings, sculptures, craft works, photographs, engravings, buildings or a model of a building. Films, videos, sound recordings and textual material are also among the types of material which copyright protects.

¹ It is worth noting that this system comes with financial costs. WIPO identifies the main cost components of IP protection as being costs for development, acquisition and maintenance, monitoring, enforcing and using IP rights (World Intellectual Property Organization, *Marketing Crafts and Visual Arts: The Role of Intellectual Property. A Practical Guide*, ITC/WIPO, Geneva, 2003, p. 47).

Under the Australian Copyright Act, copyright is defined as 'personal property'. In practice, copyright law allows industries based on the creation of copyright material to develop. It provides individuals, including practitioners, with some added incentive to invest time and talent in creating things, and also gives them a measure of control over what other people can do with images of their work.

In some cases, copyright protection for a design may be limited. This will be most relevant to practitioners working in industrial design and making prototypes that are later mass produced. This type of material may be better protected under the Designs Act. For more information see the [Australian Copyright Council fact sheets](#) relating to design, such as Designs for Functional Articles. Craft practitioners creating production runs or multiples of more than 50 should also refer to this fact sheet for discussion of the copyright/design overlap provisions.

The rights of copyright owners in art works

If you own copyright in an artistic work, you are usually the only person entitled to:

- reproduce the work (for example by photographing, photocopying, copying by hand, filming, scanning into digital form or printing);
- publish the work (that is, to make the work public for the first time); and
- communicate the work to the public (for example via email, television or the internet).

How you get copyright protection

Copyright is a free and automatic form of protection: the legal rights which comprise copyright come into being at the same time as the work is created. Thus drawing an illustration or making a sculpture creates not only the work but also the copyright in that work.

There is no registration procedure for copyright in Australia, and while artists and other copyright owners are encouraged to put the 'copyright notice' on their work (for example, '© Anne Artiste 2018'), there is no legal obligation to do so, and a work is protected equally under Australian law whether the work carries the notice or not.

International protection

Australia is a party to a number of international treaties dealing with copyright protection. The treaties provide:

- minimum standards of protection; and
- protection for copyright material from all the countries which are party to the treaty ("national treatment").

As a result, art works created overseas are generally protected in Australia, and Australian works are generally protected in other countries.

How long copyright lasts

Generally, copyright protection begins at the time the relevant material is created, and lasts until seventy years after the end of the year in which the person who created the material dies. This general rule applies whether or not the creator owns copyright when they die, or ever owned copyright i.e. it may have been assigned to another entity.

First ownership of copyright and exceptions

Generally, the creator is the first person to own copyright in what he or she has created. There are, however, some exceptions to this rule that practitioners should be aware of, including for commissioned portraits and engravings, and in relation to work that is made under the direction or control of the Commonwealth or a State, in which case the copyright is

owned by the Commonwealth or the State. Another exception is where a practitioner creates a work for his or her employer as part of their employment.

It should be noted that copyright in photography is complicated by a number of factors including the relationship between the photographer and the client and/or publisher (where there is one) and the date of first publication of the photograph. Photographers should read the Australian Copyright Council's fact sheet [Photographers and Copyright](#). Likewise, a practitioner who intends to have their work photographed should make themselves aware of issues around copyright of the photograph, ownership of the negatives, or digital files and the photographer's moral rights.

8.2.2 Dealing with copyright

If you own copyright, you can choose to 'assign' (that is, to transfer) all or any part of your copyright to someone else. To be fully effective, an assignment of copyright must be in writing and must be signed by the person transferring the copyright.

You can also choose to 'license' all or any part of your copyright to someone else. A licence is a permission for someone else to use the copyright material in the ways allowed under the licence.

An exclusive licence should be in writing to ensure that the licensee can gain the full benefits of the licence. It is advisable for all agreements about copyright to be in writing, so that all parties are clear as to what they may or may not do with the material being licensed.

Both assignments and licences of copyright may be limited: not only may a licence or assignment grant rights in relation to part only of the copyright, but the licence or assignment may be limited for example, by reference to where or for how long the material may be used.

A licence or assignment might, for example, allow a person to reproduce an illustration only onto T shirts, for distribution within Victoria only, and for a period of five years, all other rights remaining with the copyright owner.

In many cases, copyright is or may collectively be licensed on behalf of copyright owners by 'collecting societies'. Collecting societies which are most relevant in relation to practitioners are [Copyright Agency](#) and [Screenrights](#).

Some situations in which permission is not needed from the copyright owner

There are a number of situations in which permission is not needed from a copyright owner to do something such as make a copy or take a photo of their work.

For practitioners, the following four are likely to be most relevant:

- people—including organisations such as newspapers—can use copyright material if they are reporting news (for example, that a particular work has won a prize);
- both individuals and organisations can use copyright material if they are writing a critique or review (for example, a critical biography, or a review of an exhibition); and
- people can paint, draw, photograph or film some types of work (sculpture and craft items) that are on public display other than temporarily (they can also use resulting images commercially)
- there is an exemption if the work is copied for the purposes of parody or satire.

There are also a number of provisions in the Act which allow educational institutions and State, Federal and Territory governments to use copyright material without permission of the artist. However, payment through a statutory licensing scheme is made for this use and these payments are distributed by Copyright Agency and Screenrights. In addition, there are a range of exceptions relating to design which may mean copying can occur unless the design is registered under the Designs Act.

Copyright rights

- Copyright gives rights that are legally enforceable, and a failure to observe proper procedure may have legal consequences.
- Practitioners should be aware of their copyright rights. They should ensure that they have the relevant information relating to copyright law and their practices.
- People working with a practitioner or their work should get express permission if they wish to deal with a copyright work for a purpose controlled by the copyright owner.
- If copyright is infringed, a practitioner may have the right to take action but should first get legal advice.
- Practitioners should not assign copyright unless they have assessed that it is in their interests to do so or that it is reasonable in all the circumstances. Any assignment should be on the basis of free, informed and considered consent. A practitioner should not be placed under undue pressure to assign copyright.
- There are very few circumstances where users should request an assignment of copyright. If a copyright assignment is made, practitioners should ensure it is for a payment reflecting its value and should consider any ways it can be limited.
- A practitioner should know when, under the Copyright Act, they will not be the first owner of copyright unless they reach an agreement to the contrary. This issue is relevant to material created or first published under the direction or control of State, Territory or Commonwealth governments and agencies, and to a limited range of commissioned material: portraits and engravings; and photographs commissioned for private and domestic purposes. It is also relevant to material created by employees.
- Practitioners should not grant a licence on terms broader than necessary. The person requesting the licence should be able to articulate why, in all the circumstances, the terms and conditions of the licence, including payment, are reasonable.
- Practitioners and those using their work should get information about recommended licensing terms and conditions in order to consider how industry practices, scales of fees and licensing standards apply. Contact, for example, [Copyright Agency](#), [Australian Copyright Council](#) or the [Arts Law Centre of Australia](#).

8.2.3 Copyright protection for Indigenous artists and communities

Copyright protects work created by Indigenous practitioners to the same extent that it protects material created by non-Indigenous people.

However, there are a number of 'gaps' between the protection given to cultural material and items of cultural value or significance under either copyright or other 'mainstream' forms of legal protection, and the rights and obligations people have under customary Indigenous systems. For example, copyright only lasts a certain length of time, and does not protect styles or methods, while Indigenous communities generally recognise ongoing rights in relation to particular images and particular styles of representation, including over images depicted in ancient rock art.

As a result of the sensitivities surrounding the issue, and as there is as yet no specific legislation protecting Indigenous materials, many organisations have developed protocols for

dealing with certain types of material such as that created by Indigenous people and material which includes motifs or styles which are identifiably Indigenous. These include protocols from the [Australia Council for the Arts](#) and

Doreen Mellor & Terri Janke, *Valuing Art, Respecting Culture: Protocols for Working with the Indigenous Australian Visual Arts and Craft Sector*, (2001).

8.2.4 Copyright advice and assistance

There are a number of organisations in Australia available to assist practitioners and users of their work. These include the Australian Copyright Council (ACC), and the Arts Law Centre of Australia.

The [Australian Copyright Council](#) is an independent non-profit organisation that provides initial legal advice on copyright (principally for creators who could not otherwise afford legal advice), publishes an extensive range of information sheets and publications, and conducts seminars throughout Australia each year.

Copyright collecting societies collect and distribute copyright royalty payments to registered practitioners, their heirs and other owners of copyright. Each also collects royalties on behalf of overseas practitioners as part of a cooperative international network of copyright collection societies.

[Copyright Agency](#) is a collecting society for visual arts which collects fees and distributes royalties to members. Copyright Agency administers various schemes in the Copyright Act which allow educational institutions and State, Federal and Territory governments to use copyright material as well as the Resale Royalty Scheme. Practitioners become members of Copyright Agency which then represents them and collects copyright fees on their behalf. The agreement is worldwide and lasts for as long as the practitioner is a member. Individual works are licensed by members on a case by case, voluntary basis. Members are able to refuse permission, waive, reduce or increase copyright fees, or add conditions and by lines to works. Practitioners are paid copyright fees twice yearly and an administration fee is deducted. The money collected is held in a trust account until distributed to the copyright holder. Becoming a Copyright Agency member is free.

All arts organisation should approach Copyright Agency members through Copyright Agency for permissions as this insures that a legal copyright licence is negotiated.

[Screenrights](#) is a collecting society that administers the scheme in the Copyright Act under which educational institutions may copy material from television or radio without permission, provided payment is made. This service is relevant to practitioners whose work is used in television programs, including movies.

For information on copyright considerations for specific situations please see the relevant chapter of the Code.

8.3 Designs

8.3.1 Designs explained

Designs law is governed by the Designs Act 2003, which is a Federal Act. Under this Act a design showing the appearance of a product, including its shape, configuration, pattern and

ornamentation may be registered for a period of five years, renewable for a second period of five years. Registration gives the owner the exclusive right to use or sell the design, and to authorise others to use the design. It also enables the owner to commence enforcement actions against unauthorised uses of the design by having the design examined and certified.

Registration

A practitioner can only register a design if it is 'new and distinctive', that is, the design must not have been used publicly in Australia before, nor can it have been published in a document either here or overseas. It must also differ from designs already in use in Australia or that have already been published. Not all designs are registrable as there are a number of protected items, words, signs and symbols, e.g. medals, state and Commonwealth coats of arms, and the word 'Anzac'. The requirement that a design be new and distinctive makes it important to get legal advice regarding design registration very early in the product's development. The Australian Copyright Council advises registration even prior to marketing or manufacturing the product (see their factsheet *Designs for Functional Articles*). Confidentiality in these circumstances can be very important.

Publication

An alternative to registration is publication. Publication does not give any rights in respect of the design, however, it may be useful for strategic purposes. Publication is used to prevent others from obtaining certification for the same or a substantially similar design (i.e. to prevent them from initiating enforcement of the design against others), as the design is no longer considered new or distinctive.

Application and the 'priority date'

Both registration and publication of a design are initiated by submitting an application form to IP Australia. The date of filing is known as the 'priority date' and the applicant has six months from this date to request registration or publication. If the design is registered, registration will take effect from the priority date. There is a fee for applying to register or publish a design.

Design/copyright overlap

Practitioners should be aware that where an item is either registered as a design or eligible for such registration, copyright protection will be limited. Under the Designs Act, if a creator intends to make 50 or more objects to the same design, copyright protection may be lost. Under these circumstances, to ensure protection of their IP, artists may wish to register the design prior to producing the objects. If the design is not registered prior to its production, it will no longer be regarded as 'new' and therefore will not be protected. See the Australia Copyright Council publication [Designs for Functional Articles](#) for an in-depth discussion of this issue.

Enforcing design rights

Before an owner can enforce their rights in respect of a design, the design must be examined and certified by subject matter experts at IP Australia. Another person may also request examination of a registered design. Upon examination, the owner of the design will either receive an adverse report giving reasons why the registration does not in its present form meet the requirements of the Designs Act and giving opportunity for further submissions or amendment. Or, the design will be certified and the owner can proceed to enforce their rights against third parties.

Practitioners should:

- familiarise themselves with the copyright/design overlap provisions as they are likely to apply to their practice
- maintain confidentiality as they develop works, concepts, prototypes and products
- evaluate early in development whether it is economically viable and/or strategically advisable to publish or register the design
- look to other non-legal forms of protection, especially if design registration is not feasible for their practice, for economic or other reasons. Such non-legal protective strategies include, but are not limited to, the following:
 - developing a strong brand, e.g., Dinosaur Designs is an example of a practice and business that has used high level marketing to develop brand recognition that is protective against copying
 - story-telling about themselves and their practice – emotional connectors are very powerful drivers of consumer and ethical behaviour
 - effective use of traditional and social media to establish their reputation as a designer and to establish a strong public relationship between themselves and their designs
 - use of the rich data in pinterest to enforce connections between object and practitioner
 - actively working towards building a culture of respect of others' creativity and intellectual property rights; this culture will in turn operate to protect the practitioner against infringement.

Infringement

Practitioners whose rights are infringed should immediately seek legal advice.

The discussion of Designs in 8.3.1 is based on the publication 'A guide to applying for your design' published by IP Australia, with substantial remixing and addition of material. Licensed from the Commonwealth of Australia under a Creative Commons Attribution 4.0 International Licence <https://creativecommons.org/licenses/by/4.0/>

8.3.2 Designs advice and assistance

There are a number of organisations in Australia available to assist practitioners in relation to designs, in particular the [Australian Copyright Council](#), [IP Australia](#) and the [Arts Law Centre of Australia](#).

The Australian Copyright Council publishes a number of relevant fact sheets, including [Designs for Functional Articles](#) which is particularly useful for explaining the interaction between copyright law and design law in relation to functional articles.

IP Australia publishes a series of very helpful guides, including [A Guide to applying for your design](#) and the [International Design Guide](#). It also publishes guides discussing designs as part of how IP applies to particular sorts of businesses, see:

- [Nanga Mai Arung: Dream Shield: A Guide to protecting intellectual property for Aboriginal and Torres Strait Islander people](#)
- [Protect your Creative: A Guide to Intellectual Property for Australia's Graphic Designers](#)
- [Fashion Rules: A Guide to Intellectual Property for Australia's Clothing and Fashion Design Industry](#)

8.4 Patents

8.4.1 Patents explained

Patents law is governed by the Patents Act 1990, which is a Federal Act. This act and subsequent acts govern which inventions may be patented, and how patents may be enforced.

A patent is an IP right for a new invention that is commercially useful. A patent is legally enforceable and gives the patent holder the exclusive right to commercially exploit their invention in Australia for the term of the patent. There are two types of patent in Australia: a standard patent, which gives long-term protection and control over an invention, and an innovation patent, which is a relatively quick and inexpensive way to protect an incremental advance on existing technology rather than a ground-breaking invention. It is also possible to obtain patent protection overseas.

To be patented, the invention must:

- be 'a manner of manufacture'.
A patent may be granted only for a tangible invention such as a device, machine, substance, a process, or computer hardware or software, but not an artistic creation, a theory, idea, or purely mental process. For art, design and craft practitioners, patents are particularly relevant for materials innovations, for example, a ceramicist might obtain a patent for developing a particular type of clay but would not be able to patent any of the objects made from it.
- be 'novel'
The invention must not have been publicly disclosed in any form, anywhere in the world, by anyone. This has two ramifications. The first is that an invention should be kept secret until it is patented. If the invention is sold, demonstrated or discussed in public before the patent application is made, it may not be possible to patent it. An inventor can still talk to their employees, business partners or advisors about their invention but should make it clear that the information is to be kept confidential. The use of written confidentiality agreements, particularly when negotiating with potential business partners is recommended. The second ramification is that prior to applying for a patent it is important to search patent databases, sales brochures and the internet for the same or similar inventions. Patent databases are best searched by specialists.
- involve an 'inventive step' for a standard patent or an 'innovative step' for an innovation patent. An 'inventive step' means that the invention must not be an obvious thing to do to someone with knowledge and experience in the technological field of the invention. An 'innovative step' means that there must be a difference between the invention and what is known about that technology, and this difference must make a substantial contribution to the working of the invention.
- be 'useful'. The invention must do what it says it will do.
- not have been secretly used by the inventor or with the inventor's consent.

The date on which a patent application is filed establishes what is known as the priority date. Potential competitors will not be entitled to file an application at a later date for the same invention.

The discussion of Designs in 8.4.1 is based on the publication 'A guide to applying for your patent' published by IP Australia, with substantial remixing and some addition of material. Licensed from the Commonwealth of Australia under a Creative Commons Attribution 4.0 International Licence:
<https://creativecommons.org/licenses/by/4.0>

8.4.2 Patents advice and assistance

Patenting and commercialising an invention can be costly, time-consuming and requires a range of specialist skills. It is therefore important to consider carefully whether it is appropriate in your circumstances. The IP Australia publication [A guide to applying for your patent](#) has a useful section 'Decision 2: Should I patent my invention?' as well as detailed information about the patent application process. It is important to seek advice from a patent attorney prior to applying for a patent.

IP Australia also publishes [A guide to applying for your patent overseas](#) and guides discussing patents as part of how IP applies to particular sorts of businesses see:

- [Nanga Mai Arung: Dream Shield: A Guide to protecting intellectual property for Aboriginal and Torres Strait Islander people](#)
- [Protect your Creative: A Guide to Intellectual Property for Australia's Graphic Designers](#)
- [Fashion Rules: A Guide to Intellectual Property for Australia's Clothing and Fashion Design Industry](#)

8.5 Trade Marks

8.5.1 Trade marks explained

Trade marks law is governed by the *Trade Marks Act 1995*, which is a Federal Act. This Act and subsequent amendments govern which words and phrases may be used or registered as trade marks, and how trade marks may be enforced.

Trade marks are words or phrases used by businesses to distinguish their brand and products from others. A trade mark has a different legal purpose and character to a business name but may use similar or the same words. A trade mark can be established by usage of the word or phrase followed by the symbol TM or by registration in respect of a particular category of goods and services if certain requirements are met. In either case, businesses should check to ensure the proposed wording is not the same or similar to wording already in use as a trade mark for similar goods and/or services, so as to avoid infringing another's trade mark. To be eligible for registration, the intended word or phrase must not already be in use by someone else, and must meet the requirements of the *Trade Marks Act 1995*, which places limitations on the sorts of words and phrases that may be registered, particularly so as not to impinge on everyday language and expression. A registered Trade Mark becomes a transferrable business asset and is distinguished by the use of the symbol ®. Registration confers exclusive rights in respect of the use of the registered trade mark as a brand name in relation to the goods or services specified the registration and also to authorise others to use the registered trade mark in relation to that category of goods and services. It may also prevent conflict over the trade mark as a registered trade mark is likely to be more readily discoverable.

This registration applies in Australia, but it is possible to use this registration as a basis to register the Trade Mark internationally. Whether or not a practitioner needs to register their

trade mark overseas depends on whether they sell their product overseas either through a distributor or online.

Trade Marks may continue indefinitely so long as the trade mark is used in the category for which it is registered and the registration is maintained.

Collective marks and certification marks

It is also possible to register a trade mark that distinguishes goods and services provided by a particular group of people – a collective trade mark – or one that certifies a particular aspect of the good or service – a certification trade mark. Two well-known Australian certification marks are the ‘Label of Authenticity’ and the ‘Label of Collaboration’, in relation to works made by or in collaboration with Indigenous practitioners respectively. See further Doreen Mellor & Terri Janke, [Valuing Art, Respecting Culture: Protocols for Working with the Indigenous Australian Visual Arts and Craft Sector](#), (2001).

Infringement

Practitioners whose rights are infringed should immediately seek legal advice.

8.5.2 Trade marks advice and assistance

There are a number of organisations in Australia available to assist practitioners in relation to trade marks, in particular [IP Australia](#) and the [Arts Law Centre of Australia](#).

IP Australia publishes a series of very helpful guides, including [A Guide to applying for your trade mark](#) and the [International Trade Mark Guide](#) as well information about certification trade marks and collective marks and case studies of how IP has been used by creative businesses.

It also publishes guides discussing trade marks as part of how IP applies to particular sorts of businesses see

- [Nanga Mai Arung: Dream Shield: A Guide to protecting intellectual property for Aboriginal and Torres Strait Islander people](#)
- [Protect your Creative: A Guide to Intellectual Property for Australia's Graphic Designers](#)
- [Fashion Rules: A Guide to Intellectual Property for Australia's Clothing and Fashion Design Industry](#)

8.6 Confidential information and trade secrets

8.6.1 Confidential information and trade secrets explained

Practitioners develop information as they develop their practice. This may range from lists of contacts such as a mailing list of people interested in their work, to details of materials innovation, or specific designs. Much of this information provides a competitive advantage, and accordingly it is best kept confidential. Any situation in which a practitioner works with others, whether employees, colleagues, or external suppliers such as manufacturers or web designers, can lead to the loss of this confidential information and may lead to business losses. Where it is important that information is kept confidential, practitioners should take active steps to keep that information secret, such as:

- making it clear when talking to people that the conversation is confidential
 - asking people being let into secrets to sign a confidentiality agreement.
- Confidentiality agreements can be particularly important where practitioners are

working with manufacturers or others in high turnover positions. Confidentiality agreements also make the other person aware of the practitioner's rights and that the practitioner actively protects their rights.

- marking documents and correspondence 'confidential'
- maintaining security such as password protection, locking doors and files etc.

Where a practitioner takes steps to keep information confidential and secret and that information accrues commercial value because it is secret, the information constitutes a 'trade secret' and is protected against 'misuse' at common law.

8.6.2 Confidential information and trade secrets advice and assistance

The Arts Law Centre of Australia has a very useful information sheet [Protecting your ideas](#) that includes a sample confidentiality agreement

8.7 Moral rights

8.7.1 Moral rights explained

The Copyright Act was amended in late 2000 to give creators of copyright material, including practitioners, a more complete set of personal rights than they previously had under the Act. These personal rights belong to the creator of the material, whether or not the creator owns copyright (or, indeed, ever owned copyright). As a result, a creator has the right:

- to be attributed
- not to have work falsely attributed; and
- to have the integrity of his or her work respected (that is, not to have the work subjected to derogatory treatment).

These rights apply, for example, if an art work is displayed, or an image of the work is reproduced, or if something is done to the work itself. However, there are a number of situations in which these rights do not have to be respected, including if the creator consents to what is done to the work, and in cases where the action was reasonable in all the circumstances.

- Practitioners have the legal right to expect that their moral rights will be respected. This should be respected by all with whom practitioners have dealings.
- Practitioners should only consent to uses of their work which would otherwise infringe their moral rights if they have assessed it is in their interests to do so or that it is reasonable in all circumstances.
- Practitioners should not make works and sign another artist's name on these works.
- Practitioners should not be subjected to undue pressure to obtain a consent to something which would infringe their moral rights.
- Any agreement which includes a consent to an action or activity that would otherwise infringe a practitioner's moral rights should be in writing and should include everything that has been agreed to. Before entering any such agreement, practitioners should get advice or information as to the effects of the agreement.
- Practitioners should take action if their moral rights are infringed, through legal action, informally, or through a mediator.

8.7.2 Moral rights advice and assistance

There are a number of organisations in Australia available to assist practitioners in relation to moral rights, in particular [IP Australia](#) and the [Arts Law Centre of Australia](#).

The Arts Law Centre of Australia has a very helpful [information sheet on moral rights infringement](#) that includes a letter of demand.

For information on moral rights considerations for specific situations please see the relevant chapter of the Code.

8.8 Resale Royalty Scheme

The Resale Royalty Scheme is the right for an artist to receive a 5% royalty of the sales price of the artwork when it is resold commercially. It represents the ongoing relationship the artist has with their work. It came into effect following the enactment of the Resale Royalty Right for Visual Artists Act 2009. It applies to 'works of visual art', created by an artist or as a collaboration between artists, that are sold for a second or subsequent time.

The royalty will be payable if the sale:

- occurs after 8 June 2010;
- is a commercial resale;
- is the second transfer of ownership after 8 June 2010; and
- involves a sale price of \$1,000 or above (incl. GST).

The Resale Royalty Scheme does not apply to buildings, building plans, circuit layout or manuscript of literary/dramatic/musical work or works that are mass produced. However, it includes works like fine art, jewellery, installations and glassware. Specifically for craft practitioners working in one off contemporary practices the Resale Royalty can apply.

Eligibility

The artist is entitled to the royalty even if they are not the copyright owner. However, they must satisfy the residency test, meaning they have to be an Australian citizen, an Australian permanent resident or a national of a country that has a reciprocal agreement with Australia for resale royalties.

If artist is no longer living, the artist must have satisfied the test before they died and the royalty is only payable to beneficiaries who also meet the test.

The royalty will only apply on works that are sold during the life of artist or within 70 years following their death.

Commercial resales

The royalty only applies to 'commercial resales' which refers to a transfer of ownership in exchange for money (other than the first change of ownership). It must involve an 'art market professional' which includes auctioneers, art galleries, museums, art dealers and any other person 'otherwise in the business of dealing in artworks'. This means that private transactions do not give rise to resale royalties.

The royalty applies only to second sale of the work that occurs after resale royalty legislation took effect, i.e. on or after 9 June 2010. For example, if artwork is first sold in May 2008 then commercially resold in February 2011, the royalty will not apply as only one change of ownership has occurred after the commencement date. However, the next commercial resale will attract the royalty.

It does not matter if first change of ownership was not a commercial resale, but rather gift or inheritance for instance, as long as the resale is a 'commercial resale'. The royalty only applies to sales covered by Australian law.

How does it work?

Resale payment to the artist is 5% of resale price (incl. GST) where a work is sold on secondary market for \$1,000 or more (incl. GST but not including buyer's premium or other tax). There is no cap on the royalty received. If there is more than one artist, each will be entitled to an equal share of the royalty unless they have agreed otherwise. Generally, the seller, buyer and art market professional involved in the transaction are jointly liable to pay the royalty.

Collection of royalties

The artists' Resale Royalty Scheme is managed by the Copyright Agency who takes 16.5% (inc. GST) out of the royalties to cover administrative costs. Artists can register their details with Copyright Agency for free through the [website](#). If you are unregistered prior to the collection of the royalty, the Copyright Agency is obliged by law to use its best endeavours to identify, locate, and pay the rights holder.

The artist may choose to collect a royalty themselves or to appoint an agent to collect on their behalf but the Copyright Agency must be notified within 21 days of when Copyright Agency publishes a notice about a resale of the work on its website. A separate notification should be made regarding each individual resale.

8.9 Equal opportunity

8.9.1 Equal opportunity explained

Equal opportunity is the principle that all individuals should have equitable access to employment, education and services, irrespective of their gender, ethnicity, marital status, pregnancy, sexual orientation, carer/parental responsibilities, disability or physical difference. In practice, equal opportunity has two major dimensions:

- legislation that includes sanctions against all legally recognised forms of discrimination by employers, service providers and educational authorities, and provides individuals with protection against discrimination through access to legal redress;
- access and equity programs that aim to prevent discrimination from occurring and to ensure that all groups in society have access to employment, education and services.

Practitioners have guaranteed rights under equal opportunity legislation. Any practitioner who believes that they have experienced unfair treatment on the grounds of disability, ethnicity, gender, marital status, pregnancy, sexual orientation or carer/parental responsibilities, should contact the Human Rights and Equal Opportunity Commission or anti-discrimination agencies in their state.

Equal opportunity and anti-discrimination legislation

Australian legislation governing equal opportunity rights and obligations applies to employee-employer relationships, contractor relationships and access to services. Commonwealth legislation includes the *Racial Discrimination Act (1975)* (Cth), the *Sex Discrimination Act (1984)* (Cth) and the *Disability Discrimination Act (1992)* (Cth). There is

also a range of state-based legislation, for example the NSW *Anti-Discrimination Act (1997)* (NSW) and anti-vilification laws.

Under the various legislation it is illegal to discriminate against any person because of their disability, ethnicity, gender, marital status, pregnancy, sexual orientation or carer/parental responsibilities, and physical, language or cultural differences.

In the industry, employers, parties to contracts and arts organisations providing services to practitioners, and to the general public, should all be aware of and adhere to their obligations and responsibilities under Equal Opportunity and Anti Discrimination legislation.

Promoting access and equity

Organisations should develop strategies to actively promote the participation of all groups including people with disabilities, local ethnic communities, and Aborigines and Torres Strait Islanders in activities and cultural events hosted by the organisation. This should be reflected in both their programming and staffing and recruitment policies.

There are many actions that organisations may take to promote access and equity. They include:

- circulating information, invitations and publicity through the:
 - network of disability organisations and specialist press, who may also advise on alternative formats to ensure access for people with disabilities
 - media for people of non-English speaking backgrounds (NESB), and/or providing information and publicity in languages other than English
 - network of Indigenous organisations and media to ensure access by Aboriginal and Torres Strait Islander practitioners
- providing child care for employees and visitors, and flexible hours to employees, to ensure equal access for parents and women in particular
- consulting with local disability organisations to advise on improvements that could be made to buildings and services to provide special facilities or access for people with disabilities
- liaising with local ethnic communities and state and federal arts agencies to develop activities that explore, promote and utilise cultural diversity.

8.9.2 Equal opportunity advice and assistance

The [Australian Human Rights Commission](#) is a Commonwealth agency whose role is to monitor and enforce the Sex Discrimination Act, the Race Discrimination Act and the Disability Discrimination Act. The Commission can supply more information about equal opportunity rights and obligations under the law. It can also provide advice about ways to promote access and equity in employment, contracts and service provision.

8.10 Restrictions on freedom of expression

8.10.1 Freedom of expression explained

There are a number of possible restrictions a practitioner may encounter when going about the day-to-day business of bringing their art works to the public. Unlike the United States, Australia has no legislated constitutional right of free speech although the High Court has recognised that under the Australian Constitution there is an implied freedom of political communication about governmental or political matters.

There are a number of laws in Australia which potentially restrict freedom of expression, which in turn may restrict artistic expression. These include laws relating to:

- obscenity
- defamation
- discrimination and racial vilification
- trade practices laws (prohibiting misleading and deceptive conduct)
- internet regulation
- copyright and other intellectual property rights
- classification regimes regulating publications, films and computer games
- and less obvious ones like those relating to public nuisance, urban planning and workplace health and safety.

Artistic expression is not expressly restricted, however these laws and regulations may inhibit practitioners by preventing certain actions, content or material being made publicly available. A difficulty for practitioners is that it is often unclear when their work is likely to be subjected to some sort of legal restriction. This uncertainty is the result of a variety of factors including the complexity of the law, the subjective nature of interpretation and on occasion the fact that the law is outdated. This makes it difficult to provide any clear cut guidelines for practitioners as to when they may be infringing a particular law, as it will be necessary to consider each particular case in its own right.

While the law places limitations or restrictions on freedom of expression by practitioners there is also the possibility for restrictions or censorship to arise outside of the legal system: for example, restrictions arising from institutional politics or complaints by pressure groups, the community or even the opinion of an individual in a position of power. Left unchallenged these 'informal' methods of regulation can be as restricting as legal constraints by placing limits on the exhibition or publication of work that is perceived to be offensive or obscene. These pressures can have the effect of forcing public and private galleries, art publishers and practitioners to censor themselves. Self-censorship can occur where practitioners believe that if they create controversial work it will not be exhibited or sold.

Funding bodies can enact terms and conditions when making grants which in effect regulate the content of art work, or the working methods of practitioners, as evidenced in the Australia Council's [Protocols for Working with Children in Art](#), 2010. Funding bodies should endorse freedom of expression and run funding programs under the principles of arms length funding.

Restrictions on working with children

Australia Council's [Protocols for Working with Children in Art](#), must be followed by practitioners who work with children and receive Australia Council funding, or organisations which exhibit or disseminate the work of artists whose work includes children and which receive Australia Council funding.

The Arts Law Centre of Australia information sheet [Children in the creative process \(Australia\)](#) summarises the laws in Australia and provides web links to specific legislation as well as information sheets that are state specific.

Freedom of expression and practitioners

Practitioners whose work is deliberately intended to provoke controversy, or whose work is likely to provoke controversy, should consider the implications of this and try to work co-

operatively with those exhibiting, publishing or distributing the work to avoid or manage the controversy.

Practitioners should make themselves aware of any laws and protocols that may impact on the public display or dissemination of their work. Practitioners whose work is restricted or censored should seek legal advice.

8.10.2 Freedom of expression advice and assistance

The [Arts Law Centre of Australia](#) may be able to help you with a problem, or refer you to a lawyer in your area. Their website has information sheets and articles covering many areas of law and the arts including freedom of expression.

Chapter 9: Issues and Protocols Specific to Indigenous Practitioners

9.1 Introduction

While the Code of Practice is intended for the use of all Australian visual arts, craft and design professionals, and all those with whom they deal with professionally, special matters of cultural protocols and cross-cultural exchange are involved when dealing with Indigenous organisations and practitioners. This is particularly so given the diversity of the sector, which encompasses practitioners and organisations based all around Australia and organisations ranging from commercial galleries to community based art centres.

Many of the practices affecting practitioners in general, such as unfair contracts, breaches of copyright and inadequate remuneration have a greater impact on those Indigenous practitioners who also have to contend with the problems of distance, language barriers and cultural misunderstandings.

9.2 Code of conduct

The [Indigenous Art Code](#) is a system to preserve and promote ethical trading in Indigenous art. The purpose of the Code is to establish standards for dealings between dealers and artists to ensure:

- fair and ethical trade in artwork;
- transparency in the process of promotion and the sale of artwork;
- that disputes arising under the Code are dealt with efficiently and fairly.

The public company Indigenous Art Code Limited is established to administer the Code and is led by a Board of Directors drawn from the Indigenous visual arts industry and wider community. Organisations can become members of the Indigenous Art Code confirming their commitment to operating under the standards outlined in the Code.

9.3 Protocols

Ownership of cultural material

Indigenous cultural material includes objects and art/craft/design works, images, language and stories, particular words and representations of special places. Under Indigenous systems of law, ownership of cultural material is not limited to tangible items or recognisable styles. In addition to designs, styles and images, Indigenous language, words and stories are also 'owned'. This is all considered to be 'Indigenous cultural material'.

Use of Indigenous cultural material by parties other than the cultural owners requires consultation and prior consent.

Group ownership

Often there will be a group interest in cultural material and interests can differ from person to person within the group. The curator or practitioner seeking to use the image or work will need to ensure that the consultation undertaken recognises possible group interest and that appropriate permissions are sought and secured from the relevant person/s or group/s.

Interpretation

It is important that accurate and appropriate interpretation, taking into account its cultural content and context, is provided for works of Indigenous cultural material. This includes catalogue essays, films, labels, media representation and display. Users should undertake full consultation with the Indigenous practitioner and, if relevant, the cultural group.

Appropriation

Appropriation of Indigenous cultural material is highly disrespectful and is an unacceptable practice. Users should treat Indigenous cultural material with respect and avoid appropriation.

Copyright

Copyright does not cover all ownership situations in relation to Indigenous cultural material. For example, some forms of Indigenous rock art are very old, and although the images remain important and may belong culturally to certain groups who are their custodians, current copyright law does not protect rock art works that are older than 70 years from the death of the artist. Permission for reproduction of rock art or other such cultural images should be sought from appropriate local Indigenous groups or custodians.

Authenticity

There have been instances when art works have been created by non-Indigenous individuals and companies and marketed through retail outlets and/or commercial galleries as work by Indigenous practitioners. For this reason it is important for users, including buyers of Indigenous cultural material to establish the authenticity of the work.

Authenticity may be determined by checking for an authentication label or other labelling system generated either by the practitioner and/or endorsed by appropriate and reliable entities. Authenticity may also be established by working through reputable agents or dealers (information can be obtained from the [Aboriginal Art Association of Australia](#)) or by working directly with Aboriginal art and craft centres. There may be legal redress if an art work is sold with an incorrect claim of authenticity.

9.4 Further information

[9.4.1 Legislation, conventions and Parliamentary Inquiries](#)

[Aboriginal and Torres Strait Islander Heritage Protection Act 1984 \(Cth\)](#)

[Protection of Movable Cultural Heritage Act 1986 \(Cth\)](#)

[UN Declaration on the Rights of Indigenous Peoples](#)

[Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970](#)

[Berne Convention for the Protection of Literary and Artistic Works, 1979](#)

[UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005](#)

[Inquiry into Australia's Indigenous visual arts and craft sector](#), 2007

[Inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia](#), 2017

9.4.2 Protocols and codes of ethics

Aboriginal Art Association of Australia, [Code of Ethics and Business Practice](#)

Arts Law Centre of Australia, [Indigenous Protocols](#), 2003

Arts Tasmania's Aboriginal Arts Advisory Committee, [Respecting Cultures: Working with the Tasmania Aboriginal Community and Aboriginal Artists](#), 2009

Australia Council for the Arts, [Protocols for working with Indigenous Artists](#), 2007

Australian Heritage Commission, [Ask First: A guide to respecting Indigenous heritage places and values](#), 2002

Australian Institute of Aboriginal and Torres Strait Islander Studies, [Guidelines for Ethical Research in Australian Indigenous Studies](#), 2012

Design Institute of Australia, [Australian Indigenous Design Charter](#)

Indigenous Art Code Limited, [Indigenous Art Code](#)

Terri Janke, [Our Culture Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights](#), 1998

Terri Janke and Company, [Indigenous Cultural Protocols and the Arts](#), 2016

Terri Janke and the City of Melbourne, [Code of practice for galleries and retailers of Indigenous art](#), 2007

Meeting of Cultural Ministers, [Indigenous Australian art charter of principles for publically funded collecting institutions](#), 2009

Doreen Mellor & Terri Janke, [Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector](#), 2001

Museums Australia, [Continuous Cultures Ongoing Responsibilities. Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage](#). 2005

9.4.3 Articles

Kathy Bowrey, [Alternative Intellectual Property? Indigenous Protocols, Copyleft and New Juridifications of Customary Practices](#), Macquarie Law Journal, Vol. 6, 2006

Katrina Chapman, [Copyright and Aboriginal art – Balancing Western law and Aboriginal culture](#), Asia Pacific Journal of Arts & Cultural Management, Vol. 1, Issue 1, December 2003

Chapter 10: Tax

10.1 ABNs and GST

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 the 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 work totalling \$75,000 or more per year.

Practitioners who have acquired an ABN and are registered for the GST 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 lodging regular Business Activity Statements (BAS).

ABN and not GST registered

Some practitioners may have decided to get an ABN but not register for GST if their arts practice income is below \$75,000 per annum. Having an ABN is useful because the practitioner is 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 who are registered for GST.

No ABN and not GST registered

Practitioners who do not acquire an ABN and do not register for 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

Indigenous artists are not required to quote an ABN if that artist works or lives in an isolated area, known as Special or Ordinary Zone A geographic regions. Also, tax will not be withheld from payments even though the artist hasn't quoted an ABN. Therefore, in these circumstances, if you:

- are the Indigenous artist, you don't need to quote an ABN and will not have tax withheld
- run a business and pay an Indigenous artist, you will not require an ABN to be quoted and will not withhold tax.

For the Australian zone list see the [Australian zone list tool](#).

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 with their tax adviser and the ATO's website and publications.

10.2 Income Tax

10.2.1 Taxation ruling - Income tax: carrying on business as a professional artist (TR 2005/1)

In this 2005 Ruling the ATO outlined the criteria for accepting that an artist is in business for tax purposes. Practitioners should make themselves familiar with the factors in that Ruling and make sure that they:

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

See the full [Taxation Ruling here](#).

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

If the practitioner is an employee, Pay As You Go (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. 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.

If the practitioner is 'in business' or an 'independent contractor' and ABN and GST registered, income tax must be paid by the practitioner under the PAYG system. This will be paid upon lodgement of their quarterly BAS.

Practitioners in receipt of social security payments should investigate how the receipt of a short term allowance, grant or subsidy will affect their social security payments.

10.2.3 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, electricity, phone and internet services, 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 claim the deductions (at market value) available under this program.

10.2.4 Offsetting losses from your 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 art 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.

10.2.5 Income 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, 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.

For information on tax considerations for specific situations please see the relevant chapter of the Code.

Chapter 11: Insurance

11.1 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 part of their arts practice.

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.

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.

It must be noted that 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.

11.2 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

Workers' Compensation covers employees of an organisation or company against any injury sustained during the course of their employment. 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. If you have employees then you are legally required to take out workers' compensation. The definition of an employee/ worker changes from state to state, please check with your state or territory legislation to understand your obligations.

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 occupiers 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. As the owner or occupier of the space you need to identify and minimise these risks in addition to insurance coverage. If you think you are covered under someone else's public liability policy it is important to find out to what extent to make sure you are not open to any liability. Even if a practitioner has no other insurance cover, they may find that Public and Professional Indemnity is compulsory when they are engaged as independent consultants or contractors on public art works or other major commissions.

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. For example textile items may contain a dye that could cause illness or a ceramic cup may have an un-sanded edge which could cause injury. It may not cover any fault in the actual design of the product. In Australia the term manufacturer includes importers of foreign products as well as those manufacturing the product.

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. Even if a practitioner has no other insurance cover, they may find that Public and Professional Indemnity is compulsory when they are engaged as independent consultants or contractors on public art works or other major commissions.

General Property Insurance (Building and Contents)

This type of General Property Policy is largely similar to the Home and Contents generally available to domestic consumers. 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.

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 (e.g. 85%) of the insured person's gross taxable earnings averaged over the past twelve months.

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. For example spilling chemicals on a carpet where the carpet has to be replaced would be covered under this policy.

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.

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.

General Small Business Insurance Package

This type of insurance package usually includes Public and Product Liability, General Property and Personal Accident and Illness insurance. If you are making the majority of your sales online this package is a good option to make sure you are receiving all the coverage you require.

11.3 Insurance advice and assistance

NAVA can provide sole traders and partnerships including artists, craft practitioners, curators, administrators, installers, conservators and registrars access to Public Liability, Professional Indemnity, Tenants Liability and Goods in Physical and Legal Control insurance through the [Premium Plus Membership](#).

NAVA also offers access to a [Transit and Exhibition insurance](#) package to NAVA [Premium](#) and [Premium Plus Members](#).

Members of [Design Institute of Australia](#) are able to obtain discounted professional indemnity and public liability insurance through a partnering insurance company.

Chapter 12: Workplace Health and Safety

12.1 Introduction

Public awareness of Workplace Health and Safety (WH&S) has increased significantly over time, and all Australian Commonwealth and State governments have enacted legislation relating to WH&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
- 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 WH&S.

12.2 Workplace Health and Safety Legislation

The focus of Workplace Health and Safety legislation is on legal strategies for the prevention of workplace injury and disease. Under Australian WH&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 WH&S legislation mandates a general standard of care in workplaces and work processes. The protection of practitioners under workplace 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 in regards to 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.

When a practitioner is an employer of, for example, another practitioner as an assistant, then he or she has the same WH&S obligations to their employees as any of the employers referred to in this part of the Code.

Practitioners as employees

This category includes teachers in art schools, conservators and installers 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 and that the entrances and exits are properly lighted to protect against falls. There will be obligations to ensure security from assaults by the public. 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.

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.

Where project managers are employed their 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.

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. They would also 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 any legal work relationships

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 their studio. They then sell 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 their own studio, the workplace 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 workplace health and safety legislation creates a form of statutory occupier's liability. 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.

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 WH&S in their practices. They should endeavour to keep themselves fully informed about health and safety issues in their work place.

12.3 Workplace Health and Safety 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.

Acknowledgements

First edition

The first edition of this Code was developed as part of the Visual Arts Industry Guidelines Research Project (VAIGRP).

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- Tony Bond, General Manager Curatorial Services and Chief Curator of Western Art, Art Gallery of New South Wales
- Shane Simpson, Principal of Simpsons Solicitors.

Third and fourth editions

The third and fourth editions of this Code were built on previous text which was checked for accuracy and currency by industry experts and NAVA staff.

The third edition included the outcomes of a separate research project *Best Practice for Artists and Publicly Funded Galleries* funded by the Gordon Darling Foundation.

This document replaces the text on publicly funded galleries included as part of Chapter 1 in the first and second edition. Now there are two chapters: Chapter one covering artists' relationships with commercial galleries and retail outlets; and Chapter two covering artists' relationships with publicly funded galleries, institutions and events.

The draft of the third edition Chapter one was negotiated with the Australian Commercial Galleries Association (ACGA) and the Australia Council for the Arts.

Fifth edition

This fifth edition further expands the Code's relevance for craft and design practitioners as part of the National Craft Initiative (NCI), with project management by Susan Wachter and Georgia Hutchison and revisions by Margaret Farmer. NAVA and the NCI would like to acknowledge the contributions made by the following practitioners and industry experts: Barbara Campbell-Allen; Jo Dunsmuir, Director, Frankie and Ray; Melanie Katsalidis, Director and Founder, Pieces of Eight Gallery; Alexander Lotersztain, Director, Derlot; Dr Kevin Murray, Adjunct Professor at RMIT University and Research Fellow at the University of Melbourne; Toby Newell, Product Development Co-ordinator, National Gallery of Victoria; Brian Parkes, Director, Jam Factory; Kate Podger, Director, Central Craft; Jane Scott, Director, Craft Victoria; Antonia Syme, Director, Australian Tapestry Workshop; and Sarah Weston, Retail and Commissions Manager, Craft Victoria.

The name of the Code

The name of the Code has been altered to reflect two major considerations: the intent of the Code to be applicable to practitioners who operate as designers, and the intent of the Code to set best practice standards for practitioners who are operating in a professional capacity (as

opposed to 'hobbyists'). The new name for the Code is The Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector.

The Indigenous Art Code

The Code was also rewritten with reference to the development of the [Indigenous Art Code](#). NAVA was involved in the drafting of the Indigenous Code and it should be noted that the Indigenous Art Code is based on the Australian Competition and Consumer Commission model for a voluntary code. It requires industry participants to sign up to the code. Once they sign up, they agree to adhere to the terms and conditions of that code. These terms and conditions may not be the same as the best practice recommendations in the NAVA Code of Practice.

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