

\* Annex JCAT 15 Feb 2012

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# CODE OF PRACTICE

## For Australian commercial galleries and the artists they represent

A successful relationship between an artist and a commercial gallery is mutually beneficial. **The primary role of artists is to be the creators of original works of art. Forging a relationship with a gallery enables artists 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 artist's career development in the expectation of a long-term relationship with the artist. This document relates only to full gallery representation.

If there is a valid reason why changes to the basic rights and relationships inherent in this document need to be made, they should be negotiated and agreed in writing between the gallery and the artist.

The Australian Commercial Galleries Association (ACGA), the National Association for the Visual Arts (NAVA) and the Australia Council acknowledge that this artist/commercial gallery code is a 'living document' intended to reflect best commercial practice and not to inhibit the encouragement and development of the trust, responsibility and creativity that is at the heart of the relationship between gallery and artist.

It should be noted that the most common selling arrangement between visual artists and their representing galleries is that of consignment, where the gallery is not the owner of the work that it is selling, but sells the work as the agent of the artist. The situation where the gallery owns the artwork is not the subject of this document.

This is a best practice document that sets out the recommended arrangements for professional engagement between commercial galleries and artists. It is endorsed by ACGA, NAVA and the Australia Council. It is based on the ACGA Code of Practice, the protocols of many Australian commercial galleries, and the Code of Practice for the Australian Visual Arts and Craft Sector.

For other best practice standards for different forms of relationship (such as Multiple Gallery/Retail Outlet Representation; Work Bought Outright in Galleries/Retail Outlets; Agents; the Web; Public Galleries; Fundraisers, etc.), see the discussion and guidelines in the ACGA *Guidelines for Prizes, Competitions, Awards and Fundraising Exhibitions* and *Guidelines on Selling in Public Spaces*, and the Code of Practice for the Australian Visual Arts and Craft Sector (at [www.visualarts.net.au/](http://www.visualarts.net.au/) practical advice or available in hard copy from NAVA for \$44 or \$33 for NAVA members).



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Role of gallery

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<p><b>1</b> Agreements with certainty</p>	<p>1.1 The agreement should list the expectations of both parties and (a) specify that the parties agree to the principles set out in this artist/commercial gallery code, and (b) specify any respects in which they agree to vary the terms of this artist/commercial gallery code. 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. The artist and the gallery should discuss and agree any variation to these terms.</p>
<p><b>2</b> Consignment receipts</p>	<p>2.1 When delivering works to the gallery, the artist should supply the gallery with a full descriptive list of works, including a description of the condition of works. The gallery should check this consignment list against the works delivered to the gallery. The gallery should sign it and return a copy to the artist as a receipt. If the artist does not prepare the consignment list described above, it should be prepared by the gallery promptly upon taking possession of the works and a signed copy provided to the artist.</p>
<p><b>3</b> Duration of relationship</p>	<p>3.1 <b>Full representation relationships</b> are generally expected to be long-term. In practice very few of them are for a fixed period; if negotiated for a fixed period, this should be agreed in writing between the artist and the gallery. The professional relationship can be terminated simply, by either party giving reasonable notice. The gallery and the artist should jointly agree the definition of reasonable notice in advance.</p> <p>3.2 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.</p>
<p><b>4</b> Services to the artist</p>	<p>4.1 While <b>the principal service performed by the gallery is selling the artist's work—so that both the artist 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 <i>ongoing</i> nature.</b></p> <ul style="list-style-type: none"> <li>o Staging regular in-house exhibitions, producing catalogues and invitations</li> <li>o Archive and <i>curriculum vitae</i> maintenance</li> <li>o Maintaining visual material for promotional purposes</li> <li>o Media archive maintenance/records of promotional activities/post-show summaries of media outcomes and promotional material</li> <li>o <b>Pursuing ongoing sales</b> and exhibition opportunities outside the gallery in the public and private sector (e.g. in museums, public galleries, festivals, survey shows, biennales)</li> <li>o Pursuing commissioning opportunities and advocating for the artist's interests</li> <li>o <b>Cultivating collectors and corporate clients</b></li> <li>o Monitoring the artist's interests and legal rights</li> <li>o Collaborating with the artist on competition, grant and commission submissions</li> <li>o Pursuing critical writing and publishing opportunities for the artist</li> <li>o Recording of all works left on consignment, location of all works sold and on loan.</li> </ul>

**5** Frequency of shows

4.2 This checklist is intended to be an indicator of the core services a gallery providing full representation may offer; it is not exhaustive, nor will all galleries provide all services.

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

**6** Territory of representation

6.1 The gallery and the artist should jointly determine the area of representation: regional, statewide, 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.

**7** Pricing

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

**8** Gallery commission

8.1 The partnership between the gallery and the artist establishes commission as payment by the artist for the gallery's intensive ongoing work and representation in the development of the artist'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 under item 4.

**Terms**

8.2 The gallery and the artist 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 per cent of the GST-exclusive retail price of the artwork.

8.3 The gallery and the artist 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 artist and commission fees for projects. Some other examples are set out below. On the sale of sculpture, the commission is calculated after reasonable intrinsic costs have been deducted from the selling price. Intrinsic costs, such as additional labour or out-of-studio foundry and fabrication expenses, are refunded to the artist in full.

8.4 The artist should discuss with the gallery any changes to ordinary commission arrangements prior to the relevant event, including any interstate gallery representation.

8.5 Occasionally galleries and purchasers refuse to deal with each other, resulting in the artist being pressured to bypass the gallery to retain the sale. When this occurs, the gallery is nevertheless entitled to expect its full commission.

8.6 Where other agencies or galleries have been involved in the sale of a work, the total of the commission should remain the same. By prior agreement, the total commission should be split between the managing parties so the artist receives his/her full share of the retail value.

**Donations**

8.7 Should an artist wish to provide a work for a fundraising event, the gallery and the artist should come to agreement about the gifting or pricing and commission arrangements.

- 8.8 The gallery and the artist should jointly agree on a reserve price for the retail value of the work to ensure that the value of the artist's work is not undermined.
- 8.9 The gallery should respect any longstanding arrangements artists may have with fundraising events, and an artist should ensure the gallery is informed about these at the start of their relationship.
- 8.10 Asking galleries to forego commission is, in effect, a request for donation of a percentage of an earned fee. It cannot be assumed that a gallery is always able to donate in this way, but when it does the donation should be appropriately acknowledged on a par with other project contributions.

**Commissioning of artwork**

- 8.11 Due to the artist's greater involvement with the client on commissioned portraits, site-specific sculpture, paintings, ceramics, 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 the commencement of the project. Gallery commission paid on project commissions should be based on the artist's profit, not the full value of the commission.

**9 Discounts**

- 9.1 The gallery has an obligation to the artist to represent the work as fully as possible and to best advantage and not to undermine the value of the work. Selling at 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.

**10 Sales and credit**

- 10.1 The sale should be evidenced in writing. It should include all terms of the sale.
- 10.2 Payment to the artist should occur within 30 days of the sale or payment being received by the gallery, whichever is sooner.
- 10.3 Except where the sale is to a public institution, a minimum deposit of 25 per cent for works under \$1000 and 10 to 15 per cent 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.
- 10.4 The gallery should obtain the approval of the artist 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 per cent) with commission paid on each instalment. The artist should receive each instalment payment within 30 days of payment being received by the gallery. If the instalment sale is not completed within 90 days, the gallery should pay the artist the full retail price less the relevant commission.
- 10.5 Credit extended should be entirely at the gallery's own risk. The gallery and the artist should jointly agree whether or not written notice is required before the gallery extends credit to a purchaser.
- 10.6 On request, the gallery should keep the artist apprised of the progress of purchases, what is on reserve, and any instalment payments due or received.
- 10.7 The gallery should provide a statement of account to the artist every 90 days and on request verbally. This accounting should include a list of sales during the period, the sales price, commission payable, and

details of all expenses payable by the artist, and should be accompanied by the payment of any amounts owing to the artist.

10.8 The gallery should provide the artist with details of purchasers on request. It is a breach of the representation relationship for the artist to use this information to seek direct sales without the payment of commission.

10.9 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 artist 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 artists.

10.10 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.

## 11 Prizes

11.1 The gallery should send on any information it receives regarding prizes, art awards or acquisitive exhibitions that it considers of interest to its artists.

11.2 The artist should notify the gallery of his/her interest in entering prizes, art awards or acquisitive exhibitions after receiving entry forms directly from any institution. In such cases the artist 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.

11.3 The terms of participation and commission rates for these events should be based on discussion and agreement between the artist, the gallery and the host organisation. The artist 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 artist and gallery, and insisting on all works selected being for sale.

11.4 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 artist is judged to be the recipient of the non-acquisitive award or prize, the gallery should not take a commission on the award or prize.

11.5 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 artist and gallery.

## 12 Annual stocktake

12.1 At the end of each financial year the gallery should undertake a stocktake and send to each artist 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 artist. Individual stocktake statements should be issued more frequently for artists with a substantial turnover of stock.

## 13 Exhibitions arrangements and costs

### Costs

13.1 Costs borne by the artist or gallery can vary greatly. The rate of commission should be adjusted accordingly to reflect the costs devolved to the artist.

## 14 ABN and GST

## 15 Copyright

- 13.2 The gallery and the artist should agree in advance on who will pay for what exhibition costs (for example, transport, promotion, transparencies, framing, printing, postage, food and drink, advertising). It is common practice for the artist to be charged for the cost of transport to the gallery and the gallery to pay for any return transport costs.
- 13.3 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.
- 13.4 The party that pays for any slides, photographs or transparencies taken should own those transparencies. (This refers only to the ownership of the transparency itself, not the copyright embodied in it.) Prior to use, transparencies should be selected and/or approved by both the artist and the gallery.  
**Framing**
- 13.5 The artist 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 artist 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 price including the frame unless otherwise agreed. In the case of editions the artist's receipted framing costs should be refunded to the artist from the sale of the work and the commission calculated on the unframed selling price.
- 14.1 Artists must supply the gallery with their Australian Business Number (ABN) and advise the gallery whether or not they are registered for Goods and Services Tax (GST).
- 14.2 Both galleries and artists 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.
- 14.3 The decision whether to register for an ABN and GST should be made by the artist and his/her tax adviser. Galleries may recommend—but should not insist on—GST registration by their artists.
- 14.4 When entering an agreement where work is sold on consignment and both artist 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, then it should agree to provide the artist with a copy of the Tax Invoice in a timely manner.
- 15.1 The artist's copyright may be managed by the artist, the gallery or by Viscopy, the Australian visual arts copyright collecting agency. This should be discussed and agreed by the parties.
- 15.2 The gallery should get express permission, preferably in writing, before reproducing a work, even for promotional reasons, and (subject to 13.4) should not necessarily expect that the artist will give permission without charge.
- 15.3 The gallery should not usually be expected to pay copyright fees for the reproduction of the artist's work where (a) the purpose of the reproduction is to sell the original of the work on the artist's behalf (such as invitations, catalogues, advertising and publicity purposes); (b) where the gallery is in a direct and continuing relationship with the artist; and (c) where the relationship is nurturing of the artist's career rather than purely financial.
- 15.4 The gallery should not encourage or unduly influence the artist to assign or license their copyright.

## 16 Display and moral rights

- 16.1 The gallery should not require the artist to consent to something that would infringe his/her moral rights.
- 16.2 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.
- 16.3 The gallery must correctly and clearly attribute the work to its creator.
- 16.4 The gallery should consult with the artist regarding the presentation and installation of the work.
- 16.5 The gallery and the artist should agree on appropriate signage if the work requires a public warning regarding its content.

## 17 Media and promotion

- 17.1 The gallery and the artist 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.
- 17.2 The promotional activities undertaken by the gallery on the artist's behalf should be clearly documented and regularly brought to the artist's attention.
- 17.3 The gallery should regularly place fact sheets on the artist's file indicating the gallery's promotional activities undertaken on the artist's behalf.
- 17.4 At the conclusion of an exhibition, the gallery should present the artist with a media package containing copies of advertisements, invitations, press releases, reviews and other relevant materials relating to the promotion of the exhibition.

## 18 Duty of care

- 18.1 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.
- 18.2 Should a work be damaged while entrusted to the care of the gallery, the artist 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 costs of repair.

## 19 Insurance

- 19.1 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 artist in writing.
- 19.2 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).
- 19.3 The agreement should also detail what process will be followed where work is damaged during transit to the gallery including notification of the artist.
- 19.4 In the event of any breakages, theft or damage to the work in the gallery's care, the artist should be paid regardless of the gallery's level of insurance or the time taken to settle the claim.

## 20 Additional obligations of the artist

- 20.1 The artist should supply the gallery with a list of suggested invitees for exhibition openings, including a list of those who have previously bought their work.
- 20.2 The artist should deliver (and in some cases, collect) the agreed work to the gallery in good order at the agreed time.

## 21 Mediation over breaches of contract

- 20.3 The artist should provide accurate biographical and contact information to the gallery.
- 20.4 The artist represented by a gallery should not undermine or compromise his or her relationship with the gallery by attempting to establish an independent business relationship with clients or by disclosing the client list to any other party.
- 20.5 Where a gallery has significantly supported and assisted an artist to access international markets, the artist 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 artist overseas.
- 20.6 The artist should respect health and safety parameters enforced by the gallery and recognise their responsibility to protect those who work near or who are viewing their work.
- 20.7 When the artist receives directly an invitation to exhibit work in another place, the artist should disclose and discuss this with the gallery.
- 20.8 The artist should credit the gallery when their work is exhibited in any other venue (except where that exhibition is initiated by one of the artist's other galleries).
- 21.1 Mediation should be sought in the case of disputes over breaches of contract before legal action is commenced.

Read the latest version of this artist/commercial gallery code online at:

[www.ozco.gov.au](http://www.ozco.gov.au)

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