

Deciphering the Code

Jane Raffan takes a look at both sides of the fence in this update on the somewhat contentious Indigenous Art Code.

The voluntary Indigenous Art Code (the Code) has three stated aims: to ensure fair trade with Indigenous artists by establishing standards for commercial dealings, to provide a benchmark for ethical behaviour, and to build greater certainty for consumers that the works they buy come through ethical processes.

The Code's principles and best practice policies have polarised the industry. This is reflected in its uptake, which is still at relatively low levels. Operational from July 2010, the Code had 284 signatories at 31 July 2013, comprising 121 artists and 137 dealers, a category that includes art centres, commercial galleries and others. Rounding out its total are 26 supporters who do not trade in Indigenous art.

Ian Plunkett is a founding signatory, current board member and director of Japingka Gallery. He cites the Code's positive influence on the market and raising awareness about standards and provenance, commenting, "the Code has enabled art buyers to buy with confidence ... they can now readily identify ethical dealers and Galleries."

Board member **Vivien Anderson** concurs with this value-add proposition, qualifying it, however, as complementary to her expertise. She is also upbeat about its significance for artists, stating, "I am confident the Code will become a very practical tool for indigenous artists to find ethical representation through cross checking signatories."

The Cooperative Research Centre for Remote Economic Participation (CRC-REP) is currently finalising its research in the long-running *Aboriginal and Torres Strait Islander Art Economies Project*. The project has surveyed artists, audiences and art businesses to ascertain their views on a wide range of issues, including the Code.

In a survey of freelance artists operating in Alice Springs and Katherine, the CRC-REP reports 83% were unaware of who might help them if they felt they were being exploited, or having other troubles with a buyer/dealer, and a further 15% were unsure. In addition, a survey of nearly 1,000 buyers at three major Aboriginal and Torres Strait Islander art fairs revealed limited use of the Code in purchase negotiations.

A CRC-REP spokesperson indicated that about half the respondents had heard of the Code, but few claimed to have enquired about it when visiting a commercial gallery selling Indigenous art: "This may reflect a lack of awareness of the Code, a lack of agency on the part of consumers, a lack of confidence in the Code's ability to distinguish between ethical and unethical dealers, or simply that consumers do not consider the Code when making purchase decisions."

The Code's pledge regarding industry ethics is often touted in the marketing material of signatories, but many gallery owners have criticised its lack of promotion beyond their storefronts. The Australian Indigenous Art Trade Association (AIATA) is particularly aggrieved about this. **Sabine Haider**, AIATA's president, states, "The biggest problem with the implementation of the Code has been its promotion. Hampered by limited resources and limited commercial experience, the promotion has been too little, too late, and aimed at the wrong targets. The Code needs to stop talking about itself and start thinking and talking a lot more about customers and customer needs. Any assessment of efficacy requires an assessment of whether the Code is meeting its objectives. Its main purpose is to create *customer* demand for high ethical standards in producing Indigenous art, and in its trade."

Critics amongst non-signatories have voiced concerns that the Code is unwarranted and/or

discriminatory, and that its best practice standards are overwrought and inappropriate.

Short Street Gallery's **Emily Rohr**'s critique is philosophical: "I have grave concerns. Anything that seeks to define people by the colour of the skin or their cultural experiences, and apply regulatory codes based on this, is always fraught and problematic. Women do not all think the same, Aboriginal people do not have shared views, and art practices and the market should transcend such limited definitions." And she feels the Code's best practice standards smack of colonialism: "I am certainly not going to put my signature to paper to authenticate works. I am deeply uncomfortable about this ... it is culturally inappropriate and disturbs me on every level."

The Australian Commercial Galleries Association (ACGA) objects in principle to the Code, given their members have already effectively signed NAVA's *Code of Ethics and Conduct*. In addition, the ACGA objects to the high moral stance taken by government agencies with respect to Code signatories. **Anna Pappas**, president of the ACGA says, "The Code allows just about anyone to join, gives a degree of respectability to the joined and casts a shadow over decent expert indigenous art dealers who refuse to join because of some members. Yet, the practice in various government departments, embassies and high commissions is to only allow parties which are signatories to this

code to exhibit. The guidelines and Code of Ethics and Conduct signed by the members of ACGA and NAVA is ethical, equal and covers all Australian artists. That code should be followed by all dealers and if legislation is broken, then the law steps in.”

In June 2012 *The Australian* reported that 15 matters had been brought before the Code in the preceding 12 months, with two serious cases referred to the Australian Competition & Consumer Commission (ACCC). At the time, the Code’s CEO **John Oster** stated, “We are going to take action if there is a detailed matter that is in breach of the law, a serious breach of the code and where the dealer has no intention or no wish to resolve the matter.”

Oster, who has been CEO for over two years, has indicated that the Code has now dealt with 26 matters involving “a situation where the Code, or an artist, had issue with a business entity operating as a dealer in Indigenous art.” Oster further qualifies these numbers, seeing significance in the fact that around 40% of cases involved dealers who are not signatories and that not all matters contained allegations of breaches. “Successful outcomes in these cases indicates that the dealers are willing to cooperate in dispute resolution procedures ... This indicates that the industry takes the Code seriously and that good outcomes are being achieved when artists and dealers reach agreement.”

Haider also sees positive impacts: “Plenty of lower-quality operators have found other things to do. It might not show up in the statistics, but the landscape is slowly improving. Most non-signatories to the Code *are* ethical dealers. Even so, being a signatory to the Code will, in time, become a shorthand way for a properly informed public to quickly identify ethical practice – assuming, however, improvements in a couple of areas of IAC management.”

Despite this optimism, the Code’s ability to effectively enforce standards and police alleged infringements has been described by Chairman QC **Ron Merkel** as “a structural flaw”. It is for this reason, primarily, that industry wide mandatory adoption was promoted by the board in a report to the federal government following the expiration

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of the two-year voluntary experiment last July.

Signatories to the Code view voluntary adoption as a way of distinguishing themselves commercially, and many believe mandatory adoption will muddy the waters. Many critics of the Code’s ineffectualness policing breaches, however, are also signatories. Therein lies the rub: legislated mandatory adoption will enable the Code to expand its enforcement capabilities, but will also dilute the perceived competitive commercial benefit of voluntary adoption.

The current Resale Royalty review has also raised questions about impacts on the Code’s efficacy. In his submission, Professor **John Altman** from the ANU’s Centre for Aboriginal Economic Policy Research warns of its impact on artists’ need for cash, commenting that it enhances the probability of private canvases for sale outside the formal art marketing system; or of bakki (tobacco) art for the immediate purchase of tobacco where BasicsCard limits access to such prohibited goods ... potentially undermining the operations of the voluntary Code of Conduct.”

Six years ago, the Code was a key recommendation from the Senate Committee report *Indigenous Art*

– *Securing the Future: Australia’s Indigenous visual arts craft sector*. Oster has confirmed that a process to examine a legislated Code was formally approved by Minister **Tony Burke** and Assistant Treasurer Bradbury before the September 2013 election was called. He added that Shadow Spokesperson for the Arts, Senator **George Brandis**, also expressed support for the undertaking. Says Oster, “The development of a legislated Code under the ACCC is a long and difficult process ... We expect a new government will revisit the matter and initiate public consultation to look at a range of regulatory options for the industry.”

In the interim, the take-up of the code will grow piecemeal, if not at pace, and critics – signatories among them – will continue to voice concerns. The AIATA reports that its members are also thinking about how to help to improve the Code’s promotion. As Haider stresses, “Improved marketing is not just a responsibility for government, or for regulation.”

The Aboriginal art industry is still reeling from dizzying regulatory dances. Whether the Code’s last waltz engenders a lasting positive outcome for the art sector it seeks to support and those it wants to protect remains to be seen.