

# Best Practice for Artists and Publicly Funded Galleries

## SECTION B.4

### CODE OF ETHICS FOR PUBLICLY FUNDED GALLERIES

#### B.4.1 Issues

It is very important for publicly funded galleries to develop and disseminate written guidelines or a Code of Ethics to set standards for ethical behaviour in relation to the operation of the 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.

Galleries that have failed to communicate clearly their expectations about the behaviour of their staff, boards and volunteers suffer when actual, or perceived, unethical decisions or questionable behaviours result in loss of goodwill and unwanted attention from the press, regulators, funders, and the wider industry. In a worst case scenario, inappropriate behaviour may be referred for the attention of the Independent Commission Against Corruption, and any case has the potential to damage reputations and relationships. These are very good reasons for galleries to adopt, or adapt, existing codes, and to ensure that they form part of the induction and training of staff, Board members and volunteers. This document notes the range of existing codes and points to some specific areas for attention for the Australian visual arts and craft sector.

Codes focus primarily and necessarily on the duty of the institution to provide ethical leadership and on the roles and responsibilities of the staff. The two most widely referenced codes in the visual arts and craft sector are the Museums Australia *Code of Ethics for Art, History and Science Museums* and *The International Council of Museums (ICOM) Code of Ethics*. The MA Code was first published in 1985 by the Council of Australian Museum Associations, and adopted in January 1994 when the Art Museums Association of Australia Inc., the Museums Association of Australia Inc., the Museum Education Association of Australia Inc. and the Council of Australian Museum Associations Inc amalgamated to form a single body, Museums Australia. The ICOM Code, updated in 2006, was developed for the guidance of institutions around the world.

These codes set useful standards regarding commercial activities, acquisitions to museum collections, disposal of collections, principles of professional conduct, the personal responsibility of staff members to collections; the public; the employing organisation; colleagues and the profession. They also deal with appointments, the abuse of professional position, conflict of interest and the overlap of personal and professional interests.

They cannot however incorporate guidance for all of the specific situations likely to be encountered in the visual arts and craft sector and this is why it is so important for each gallery to consider its own situation. One characteristic of the sector is that practitioners may be employed by, or otherwise involved with, publicly funded galleries as curators (employed or freelance or volunteer), as staff members or as serving Board members, or have personal relationships with people in these positions. The complex webs of relationship in and across the sector means there is significant potential for conflict of interest.

Conflict of interest can be dealt with in a number of ways including avoiding the behaviour causing the conflict, declaring the conflict and withdrawing from any decision making, and weighing up the advantages and disadvantages of a particular course of action and documenting the decision in light of these factors. The New South Wales Council of Social Services Management Services Unit has a number of practical and useful information sheets

<http://www.ncoss.org.au/projects/msu/downloads/resources> covering setting standards, codes of conduct, ethical decision making and managing conflict of interest, including a voluntary declaration form for use by all personnel binding them to ethical principles of conduct and decision making.

In publicly funded galleries, Board members are generally bound by specific legal and financial responsibilities as well as undertaking aspects of strategic planning and goal setting. It is important that

Board members and volunteers are made aware of an organisations' Code of Ethics and agree to adhere to its principles. Some guidance for members of the Board or Committees of Management can be publicly accessed via the Australia Council downloadable document titled *On Board: Serving on the Board of an Arts Organisation* by David Fishel (2004, Commonwealth of Australia [http://www.ozco.gov.au/arts\\_resources/publications/on\\_board/](http://www.ozco.gov.au/arts_resources/publications/on_board/)) while further information can be found the book by the same author titled *The Book of the Board* (Federation Press, 2003, RRP \$49.95, <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862874435>).

Note that there are other useful resources that can assist in the development of guidelines. These include *The Code of Practice for Australian Commercial Galleries and the Artists They Represent*, (2003) endorsed and co-authored by the Australian Commercial Galleries Association, NAVA and the Australia Council ([http://www.acga.com.au/Code\\_of\\_ethics.pdf](http://www.acga.com.au/Code_of_ethics.pdf) or <http://www.visualarts.net.au/advicecentre/codesofpracticeandprotocols/codecommercial>). The ACGA has also published protocols for selling work and for competitions, prizes and awards, available from the ACGA. Both the Association of Western Australian Art Galleries ([http://www.awaag.org.au/code\\_of\\_ethics.htm](http://www.awaag.org.au/code_of_ethics.htm)) and the Indigenous Art Trade Association (<http://www.arttrade.com.au/ethics.htm>) have short code of ethics statements available on their respective websites. The Indigenous Australian Art Commercial Code of Conduct is due to be published in late 2007 by NAVA.

## SECTION B.4.2

### Draft Recommendations for a Code of Ethics for Publicly Funded Galleries

The general principles outlined below are derived from the Museums Australia and International Council Of Museums Codes. Some principles have been spelled out in greater detail for emphasis regarding conflict of interest, commercial activities, acquisitions, deaccessioning and disposal.

#### What is your opinion?

**Are there other issues to be addressed?**

### B.4.3 Draft Code of Ethics for Publicly Funded Galleries

#### B.4.3.1 Professional Conduct

The Code should include specific statements regarding its expectations for the professional behaviour of its staff, boards and volunteers in relation to:

- adherence to the mission and goals of the gallery
- observance of relevant international and national legislation and all applicable codes
- conscientious discharge of duties
- maintenance of confidentiality
- awareness of protocols for working with Indigenous material and peoples
- responsible representation of the gallery to the public, to other museums and galleries, and to stakeholders
- responsiveness to enquiries and appropriate research
- training of new Board, staff and volunteers.

For the specific wording of relevant clauses, not repeated here, please refer directly to <http://www.museumsaustralia.org.au/dbdoc/maethics.pdf> and to <http://icom.museum/ethics.html>

#### B.4.3.2 Conflict of Interest

The Code 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 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 artist or craft 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 an artist/craft practitioner with whom there is a personal or professional relationship or where there is a relationship with the gallery representing that practitioner
  - there is a financial interest on the part of the staff or Board member in the market value of an artist/craft practitioner's work by virtue of prior ownership and/or prior collection of that artist's or craft 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

#### B.4.3.3 Commercial activities

The Code should describe what constraints should apply regarding its 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 and do not involve exploitation of practitioners' copyright
- selling artists'/craft practitioners' work via exhibitions and via retail outlets such as a museum or gallery shop. Galleries should ensure that its discounting policies and rate of commission does not exploit the artist/craft practitioner nor penalise the commercial gallery sector. Where a commercial gallery represents an artist, commission should be split.

#### **B.4.3.4 Acquisitions to a Collection**

The Code should include or refer to specific policies covering procedures for the acquisition, care and use of collected works, including:

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

#### **B.4.3.5 Deaccessioning and Disposal**

*The Code should include or refer to specific policies that clearly articulate the circumstances in which works might be deaccessioned through donation, transfer, exchange, sale, repatriation or destruction.*

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

#### **B.4.3.6 Public Interest**

The Code of Ethics, and any specific policies that underpin the code, should be publicly available.

*Comments on these documents should be forwarded to NAVA by 31 August 2007  
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