



CODE OF PRACTICE

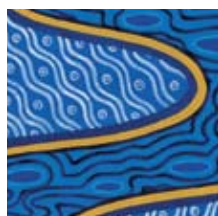
for galleries and retailers of Indigenous Art

Living
the Arts



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Artwork "Birrarung in Flood"
by Mandy Nicholson©

Lord Mayor's Message

The City of Melbourne is proud of its Indigenous heritage and recognises the Traditional Owners of the Kulin Nation.

Indigenous artists and their work make a major contribution to the cultural richness of our city. That is why we believe it is vital to support the creative spirit of Indigenous artists as well as protect their rights.

The City of Melbourne is proud to introduce the Code of Practice for galleries and retailers of Indigenous art in the City of Melbourne – the first of its kind in Australia. This Code is a best practice guide for galleries and retailers to help ensure Indigenous art is exhibited and sold appropriately and authenticity is protected.

The Code was finalised after consultation with Indigenous artists and a broad range of peak organisations, galleries and retailers including the Koorie Heritage Trust, the National Gallery of Victoria and the National Association of Visual Arts. We will review the Code at least every three years to ensure it remains relevant to the Indigenous art industry.

Importantly, the Code represents a major step forward for all those involved in Indigenous arts. It demonstrates the positive differences that local government, Indigenous communities and the arts sector can make from working together.

I encourage anyone involved in the representation and sale of Indigenous arts in Melbourne's central business district to make use of this Code and help protect the value of our Indigenous arts community. I hope other local government bodies throughout Australia will continue this important practise and introduce similar codes within their own jurisdictions.



John So
Lord Mayor of Melbourne

About the Code of Practice

The Code of Practice for galleries and retailers of Indigenous Art (the Code) in the City of Melbourne, is a guide in appropriate ways to sell and display Indigenous art and work with Indigenous artists.

The Code is a developed statement of principles dealing with industry practices designed to set a standard of acceptable industry practice and fair dealing. This code of practice is a guide to best industry practice.

The Code covers industry issues and specifics relating to the sale of Indigenous arts and crafts in Victoria. This document may also be useful for retailers and galleries outside of the Melbourne CBD. The City of Melbourne encourages other local government bodies in Australia to develop and implement similar codes of practice within their jurisdictions.



1. Preliminary

- 1.1.** The code of practice is referred to as the City of Melbourne's Code of practice for galleries and retailers of Indigenous art ("the Code").
- 1.2.** The Code is intended to guide galleries and retailers in the City of Melbourne in appropriate ways to sell and display Indigenous art, and to interact with Indigenous artists.
- 1.3.** "Indigenous artists" refers to artists of Aboriginal and Torres Strait Islander descent; who identify as Aboriginal or Torres Strait Islander; and are accepted as such in the community where he or she lives or comes from. "Indigenous art" refers to art and craft produced by Indigenous artists.
- 1.4.** The Code was initiated by the City of Melbourne's Indigenous Arts Advisory Panel (IAAP). The IAAP believes that Indigenous artists, galleries, retailers and consumers will benefit from a healthy marketplace where there is commitment to best industry practice and fair dealing.
- 1.5.** The Code aims to promote ethical practice in the sale of Indigenous arts products and services by galleries (commercial and public) and retail outlets in the municipality of the City of Melbourne by:
 - 1.5.1.** encouraging the sale of authentic Indigenous products and services;
 - 1.5.2.** promoting fair and respectful relationships between Indigenous artists and galleries/retailers; and
 - 1.5.3.** promoting the sale of South Eastern Australian Indigenous Artists' products and services.
- 1.6.** South Eastern Australian Indigenous artists refers to:
 - 1.6.1.** Indigenous artists living in Victoria, and associated border communities, for more than 3 years who contribute to the Indigenous arts community in Victoria; or
 - 1.6.2.** Indigenous artists who are descended from traditional Aboriginal clans in Victoria, and associated border communities.

The City of Melbourne encourages the use of the Code by people and entities involved in the representation and sale of Indigenous arts and craft in the central business district of Melbourne. This includes:

- 1.7.1.** galleries, including commercial galleries and public galleries;
- 1.7.2.** museums, libraries and cultural institutions involved in retail sale of Indigenous products;
- 1.7.3.** retail outlets selling Indigenous products including craft, arts and souvenirs;
- 1.7.4.** market stalls;
- 1.7.5.** websites hosted from the Melbourne CBD which sell aboriginal art online; and
- 1.7.6.** trade fairs, showcases, festivals and cultural events.

2. Professionalism, honesty and integrity

- 2.1.** Galleries and retailers will exhibit professionalism, honesty and integrity in their dealings with all persons and entities in the Indigenous arts industry, including consumers, Indigenous artists and other dealers.
- 2.2.** Galleries and retailers will not act in any way that will bring discredit to the sale of Indigenous art in the City of Melbourne.
- 2.3.** Galleries and retailers must not engage in any acts or omissions that are misleading, dishonest, deceptive or fraudulent.

3. Promoting the diversity of Indigenous arts and cultures

- 3.1.** Galleries and retailers will promote the diversity of Indigenous arts and cultures respectfully by recognising:
 - 3.1.1.** there are many different Indigenous cultures throughout Australia;
 - 3.1.2.** Indigenous artists use both natural and new media materials;
 - 3.1.3.** Indigenous cultures are dynamic; and
 - 3.1.4.** Indigenous artists live in isolated, city and rural communities.
- 3.2.** Galleries and retailers in the Melbourne CBD will be encouraged to promote South Eastern Australian Indigenous artists, and their arts and craft.
- 3.3.** To assist with understanding and interpretation of Indigenous arts and culture, galleries and retailers will take steps to inform themselves. The City of Melbourne suggests the following references as useful guides:
 - 3.3.1.** City of Melbourne's website www.melbourne.vic.gov.au/indigenousarts
 - 3.3.2.** for information on South Eastern Australian Artists refer to Deadly Expressions Catalogue, produced by Koori Business Network www.business.vic.gov.au and Arts Victoria, or contact Koorie Heritage Trust www.koorieheritagetrust.com;
 - 3.3.3.** Australia Council's Aboriginal and Torres Strait Islander Arts Board's Indigenous Visual Arts and Protocols guide – www.ozco.gov.au
 - 3.3.4.** National Association for the Visual Arts www.nava.org – Valuing Arts, Respecting Cultures;
 - 3.3.5.** Indigenous visual arts professionals including curators, artists and arts administrators; and
 - 3.3.6.** relevant Indigenous people and community organisations (visit City of Melbourne's website www.melbourne.vic.gov.au/indigenousarts).

4. Relationships with Indigenous artists

- 4.1.** Galleries and retailers will develop relationships with Indigenous artists based on trust, respect, mutual understandings and responsibility.
- 4.2.** Galleries and retailers will value Indigenous artists' professional practice and conduct business relations in a professional manner.
- 4.3.** All commercial dealings will be based on fair and ethical practices.
- 4.4.** Galleries and retailers will not engage in unfair or unethical practices which exploit Indigenous artists and bring disrepute to the Indigenous art market. Such practices include:
 - 4.4.1.** paying artists unfairly for their works or in alcohol or drugs;
 - 4.4.2.** operating sweat shops;
 - 4.4.3.** selling fakes or frauds; and
 - 4.4.4.** painting Indigenous style art and passing it off as painted by Indigenous artists.
- 4.5.** The commercial terms of a relationship between a gallery and an Indigenous artist should be based on fairness and transparency. The following are a list of practices that support this principle:
 - 4.5.1.** galleries will provide the Indigenous artist with written terms and conditions of their services in plain English, including sales policy and the commission rates and will encourage the artist to get legal advice before signing an agreement;
 - 4.5.2.** whether a relationship is exclusive or non-exclusive should be negotiated and explained;
 - 4.5.3.** Indigenous artists will be paid fairly for their work in accordance with award or industry rates. For information about these rates contact the National Association for the Visual Arts www.nava.org;
 - 4.5.4.** galleries will explain pricing structures to Indigenous artists. For example, whether based on consignment or if brought up front, and provide details of the proposed retail price;
 - 4.5.5.** when a sale is made, a gallery will ensure prompt payment is made either directly to the Indigenous artist if the Indigenous artist is unrepresented, or if represented by an arts centre or agent, directly to the representative. Indigenous artists will be advised of the sale of their work in a reasonable time, for example within two to four weeks, after it is sold;
 - 4.5.6.** the gallery will keep clear documentation for each sale and the details of the purchaser are to be given to the Indigenous artist unless the privacy of the purchaser has been requested;
 - 4.5.7.** galleries will use written contracts with Indigenous artists. Sample agreements are available from the Arts Law Centre of Australia. Adequate opportunity will be given to the artist to have the contract explained, seek legal advice, consider the proposed terms, and where possible, negotiate the terms. If necessary, a translator will be used to translate the terms of the contract;
 - 4.5.8.** managing expectations of the artist is important. Galleries will consult the Indigenous artist or their representatives, about how they will display, promote and sell their works; and
 - 4.5.9.** galleries will seek the prior written consent of the artist for reproductions of their works for promotional purposes such as on websites, in advertising and in catalogues, and will inform the artist about Viscopy membership. The issue of fees should be discussed.
- 4.6.** Galleries and retailers will fairly and honestly represent works by giving full details and correct information regarding an artist and artwork when selling Indigenous art online. Best practice guidelines for art online are available from the Arts Law Centre of Australia. They will not:
 - 4.6.1.** sell forged or fake Indigenous art on the internet;
 - 4.6.2.** sell works of uncertain provenance; and
 - 4.6.3.** use names, logos and biographical information copied from websites of Aboriginal arts centres and Indigenous organisations, without prior written permission of arts centre and copyright owners.
- 4.7.** Galleries must be responsible for the proper disclosure of information relating to the authorship and provenance of any work exhibited or sold.



5. Respect cultural beliefs and practices

- 5.1.** Galleries and retailers will respect Indigenous cultural practices.
- 5.2.** Galleries will promote interaction between visiting Indigenous artists and the local Melbourne Indigenous community for example by:
- 5.2.1.** acknowledging country and Traditional Owners at openings;
 - 5.2.2.** inviting Traditional Owners to present a welcome to country;
 - 5.2.3.** inviting key members of the Melbourne Indigenous community to launches, openings and events; and
 - 5.2.4.** promoting networking between visiting Indigenous artists and the Victorian Indigenous community.
- 5.3.** A welcome to country is an address given by an Indigenous Traditional Owner of the land, included in the official openings of events. As a matter of Indigenous cultural practice, large cultural events often invite an Indigenous custodian or representative of the traditional land owner group to provide a welcome to country. Alternatively, an Indigenous person of prominence in the arts community or an elder who has lived in the area and contributed to the Indigenous community may also be asked.
- 5.4.** The sale of sacred or secret material is illegal in Victoria, and is highly culturally offensive to Indigenous people. Galleries will not engage in the sale of sacred or secret material such as the sale of sacred tjuringas and human remains. 'Sacred or secret material' is material that is considered to be secret or sacred by the community to which it pertains.
- 5.5.** Galleries and retailers will sell culturally authentic works by Indigenous artists. "Culturally authentic" means that the work of the Indigenous artist depicts designs and stories that the artist has some connection or belonging. Cultural appropriation from other Indigenous traditions is not condoned, and Indigenous artists should follow appropriate Indigenous cultural protocols. Galleries and retailers will not promote the production or sale of works by Indigenous artists that culturally appropriate cultural material from another community or clan group. Proper consent from the relevant Traditional Owners of that cultural material is required, and the sharing of benefits with the source community should be discussed.
- 5.6.** Galleries and retailers will utilise a Notice of Traditional Owners interest and agreement with the artist. For example:
- The images in this artwork embody traditional ritual knowledge of the (name) community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that has not been authorized by the custodians is a serious breach of the customary law of the (name) community, and may also breach the Copyright Act 1968 (Cth).**
- For enquiries about permitted reproduction of these images contact (community name)'.**
- 5.7.** Galleries and retailers will take special care when dealing with the work of deceased Indigenous artists, and permission should be obtained in writing from the family or clan to use the artist's name and image in advertising and marketing.



6 Representation of Indigenous artists and their cultures

- 6.1.** Galleries will represent Indigenous people and their cultures accurately and in a culturally appropriate manner when displaying, advertising and promoting Indigenous art and craft.
- 6.2.** Galleries and retailers will use Indigenous images, flags, words and names appropriately. For example:
- 6.2.1.** the use of Uluru images, for commercial retail purposes not associated with this important cultural place demeans this sacred place. Under the Environment Protection and Biodiversity Conservation Act and Regulations, a permit is required to use captured images from National Parks for commercial purposes, and to use in advertising. For information about permits for the use of Uluru, refer to the Uluru Kata Tjuta National Park Public Communications section.
 - 6.2.2.** care will be taken when displaying the Aboriginal and Torres Strait Islander flags, to ensure that the flags are flown or displayed the right way. For information refer to the policy for Aboriginal and Torres Strait Islander flag of the Australian Institute of Aboriginal and Torres Strait Islander Studies, available at www.aiatsis.gov.au.
 - 6.2.3.** the use of derogatory terms will not be used. For example, terms such as “Abo”, ‘part-Aborigine’, ‘full-blood’, ‘half-caste’ are offensive to many Indigenous people. Style guides recommend the use of a capital “I” for Indigenous and “A” for “Aboriginal”.
 - 6.2.4.** galleries and retailers should consult relevant Indigenous people on this use of Indigenous language words. For information about relevant language authorities contact Federation of Aboriginal and Torres Strait Islander Languages www.fatsil.org.
- 6.3.** Galleries and retailers will consult the Indigenous artist before using his or her biography and photograph to sell work. The artist should approve biographical content and photographs. Galleries should not use personal or sensitive information without prior consent of the artist. Where the Indigenous person has a low level understanding of English and assistance is needed, a support person should be used such as an arts adviser in an Aboriginal arts centre.
- 6.4.** Galleries and retailers will not pressure Indigenous artists to hold up paintings for photographs to be displayed at the point of sale, or paint works at the point of sale.

7 Authenticity

- 7.1.** Galleries and retailers will promote, sell and display authentic Indigenous arts and crafts. “Authentic Indigenous arts and craft” refers to arts and craft made by an Aboriginal or Torres Strait Islander person, from start to finish. It includes contemporary works and works that draw from Indigenous traditional practices and beliefs.
- 7.2.** Galleries and retailers will promote and sell Authentic Indigenous art products. “Authentic Indigenous art products” are products reproducing Indigenous art, such as t-shirts, postcards, souvenirs and stationery, produced under a fair licence agreement, where royalties are paid to Indigenous artists. Sample agreements are available from the Arts Law Centre of Australia and assistance regarding licence fees is available from Viscopy.
- 7.3.** Retailers and galleries will not pass off imitation Indigenous craft items like plastic coolamons, bamboo didgeridoos and boomerangs made overseas, as authentic Indigenous craft.
- 7.4.** Retailers and galleries will not put pressure on Indigenous artists to paint certain styles and imagery that are not part of the individual Indigenous artist’s cultural heritage.
- 7.5.** Retailers and galleries will not force or induce Indigenous artists to sign their names to paintings not created by them, or produced under their direction and control.
- 7.6.** Galleries will recognise the important role of Aboriginal arts centres. Aboriginal arts centres, particularly those in isolated areas of Australia, have a key role in Indigenous arts production and advocating for Indigenous artists in the sale and promotion of their works. Dealing directly from the Arts Centre is a way to source authentic products.

8 Provenance and source of work

- 8.1.** Galleries will not unfairly or illegally represent the provenance of a work.
- 8.2.** Galleries will source original works from reputable sources such as directly from the Indigenous artist, an Aboriginal Arts Centre or his or her reputable agent.

9 Fair trading practices

- 9.1.** Galleries and retailers will conduct their business in accordance with fair trading practices and refrain from the sale of bogus and imitation Indigenous art and fake cultural products.
- 9.2.** Galleries and retailers will not make false or misleading representations about:
 - 9.2.1.** the standard or quality of a work;
 - 9.2.2.** the provenance of a work;
 - 9.2.3.** any sponsorship, approval or affiliation about the artist or work that it does not have; or
 - 9.2.4.** the place of origin of the work or item.



10 Marketing

- 10.1.** Galleries and retailers will market Indigenous artists honestly, accurately and with respect to Indigenous cultural practices by:
- 10.1.1.** using clear labelling and packaging to identify the Indigenous artist;
 - 10.1.2.** using Aboriginal Arts Centre names and logos with prior written approval from the relevant Aboriginal Arts Centre;
 - 10.1.3.** using names and logos of Indigenous organisations and groups with the prior written approval of that Indigenous organisation or group;
 - 10.1.4.** keeping Indigenous artist's biographies up to date;
 - 10.1.5.** correctly stating where the product was made (eg correct place of origin);
 - 10.1.6.** correctly stating cultural belonging/ association of the Indigenous Artist;
 - 10.1.7.** not marketing or selling sacred/secret material;
 - 10.1.8.** respecting cultural gender issues; and
 - 10.1.9.** seeking prior permission from the Indigenous artist's family or clan for the use of names and images of deceased Indigenous artists.
- 10.2.** For marketing Indigenous galleries and shops as Indigenous owned and controlled, retailers and galleries should refer to the Aboriginal Tourism Australia guidelines which define an 'Indigenous business' as one that is owned at least 50% by Indigenous people.
- 10.3.** Galleries and retailers will use appropriate labeling practices that promote authentic Indigenous art.

- 10.4.** Certification or authenticity marks will be used only if there is an appropriate authentication process which involves Indigenous people in the consideration of the authenticity of a work, for example, utilisation of a Notice of Traditional Owners interest and agreement:

The images in this artwork embody traditional ritual knowledge of the (name) community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that has not been authorized by the custodians is a serious breach of the customary law of the (name) community, and may also breach the Copyright Act 1968 (Cth).

For enquiries about permitted reproduction of these images contact (community name)'.

- 10.5.** Galleries and retailers will label original Indigenous artworks with details of:
- 10.5.1.** name of the Indigenous artist;
 - 10.5.2.** title of the work;
 - 10.5.3.** medium/description of artwork
 - 10.5.4.** year the work was created;
 - 10.5.5.** language group or clan/affiliation of the Indigenous artist; and
 - 10.5.6.** descriptions of the work and appropriate cultural information can be used where relevant.

11 Copyright

- 11.1.** Galleries will respect the copyright of the Indigenous artist.
- 11.2.** Galleries will take an active approach to advising customers about copyright issues. Galleries will adopt practices which make buyers of Aboriginal art aware that copyright in a work remains with the Indigenous artist after the physical work is sold. Sale of Artwork sample agreements are available from the Arts Law Centre of Australia.
- 11.3.** Galleries and retailers will not put pressure on Indigenous artists to licence or assign copyright of their artworks.
- 11.4.** Galleries will discuss with the Indigenous artist, and obtain his or her prior written consent to use, make digital copies and reproduce artists' works for advertising and sale purposes in catalogues, invitations, advertisements and on websites. Special attention should be paid to discussing with the artist the digitising of works and making them available on website. Best practice guidelines for art online are available from the Arts Law Centre of Australia.
- 11.5.** Where gallery and retailer websites reproduce images for sale, warnings and other methods of acknowledging copyright and safeguarding the artist's work will be considered, and discussed with the artist. For example, measures could include using small or low resolution images only, watermarking, or disabling downloads of the image.
- 11.6.** Where a gallery does not represent an Indigenous artist exclusively, the artist will be paid for the use of their artworks for advertising and promotion, and such use of the work must only be made with the prior written consent of the Indigenous artist, and where an appropriate payment of royalties is made to the Indigenous artist.

12 Moral rights

12.1. Galleries and retailers will respect the moral rights of Indigenous artists and attribute and acknowledge them as the creators of their works.

12.2. In recognising the moral rights of Indigenous artists, galleries must seek the prior written consent of the Indigenous artist on:

12.2.1. the proper attribution to be given to the Indigenous artist (including references to biographical material); and

12.2.2. all issues that may affect the integrity of the Indigenous artist's work.

12.3. Galleries and retailers must not make any alterations or changes to the Indigenous artist's original artwork.

12.4. Galleries and retailers must not make any substantial changes to reproductions of the artwork without the prior written consent of the Indigenous artist.

13 Indigenous cultural and intellectual property

13.1. "ICIP" or "Indigenous Cultural and Intellectual Property" means Indigenous peoples rights to their heritage. Heritage comprises of all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. The heritage of Indigenous people is a living one and includes objects, knowledge and literary and artistic works which may be created in the future based on that heritage. Heritage includes:

13.1.1. literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);

13.1.2. scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);

13.1.3. all items of movable cultural property;

13.1.4. human remains and tissues;

13.1.5. immovable cultural property (including sacred and historically significant sites and burial grounds);

13.1.6. documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

13.2. Where the work incorporates ICIP, galleries and retailers will consider the following issues:

13.2.1. the appropriate attribution to be given to Indigenous groups; and

13.2.2. the integrity of the work should be respected by observing Indigenous cultural protocols.

13.2. Where a dispute arises in relation to ICIP issues, the parties will use their best endeavours to resolve the dispute.



14 How this code relates to other industry codes

14.1. Galleries and retailers are encouraged to join associations that promote fair and ethical conduct and have adopted codes of ethics or codes of practice. For example, the Australian Commercial Galleries Association and the Australian Indigenous Art Trade Association promote fair ethical practice by its members.

14.2. Galleries that are members of professional associations such as the Australian Commercial Galleries Association or the Australian Indigenous Art Trade Association should adhere to the relevant code of ethics and code of practice.

14.3 The City of Melbourne notes the development of a National Code of Practice being undertaken by the National Association of Visual Arts (NAVA). The development of the NAVA National code is supported however this Code applies specifically to galleries and retailers in the CBD of Melbourne, Victoria.

15 Implementation of the Code

15.1. The City of Melbourne will implement the Code by inviting galleries and retailers to subscribe to the Code, by voluntary agreement.

If a gallery or retailer agrees to subscribe to the Code, the City of Melbourne will recognise it as an “accredited gallery or retailer”.

15.2. “Accredited gallery or retailer” means a gallery or retailer in the Melbourne CBD that has entered into a written voluntary agreement with the City of Melbourne to comply with the Code (“Code Agreement”).

15.3. The City of Melbourne will promote the accredited gallery or retailer by displaying its details on a list of accredited galleries and retailers, to be displayed by the City of Melbourne on its website, and at its Visitor’s Information Centre.

15.4. An accredited gallery or retailer may use the City of Melbourne’s Code Branding, in accordance with the ‘Code Agreement’.

15.5. To monitor compliance, the Code Agreement will be renewed annually. The accredited gallery or retailer will provide evidence of their compliance each year. If the City of Melbourne considers that the accredited gallery or retailer has not provided sufficient evidence of compliance, it may remove the name of the Gallery or retailer from the Accredited Gallery or retailer list.

15.6. The City of Melbourne will investigate the possibility of giving an Award for Ethics in the sale of Indigenous art, annually, as part of the Melbourne Awards, to a gallery or retailer in the Melbourne CBD.

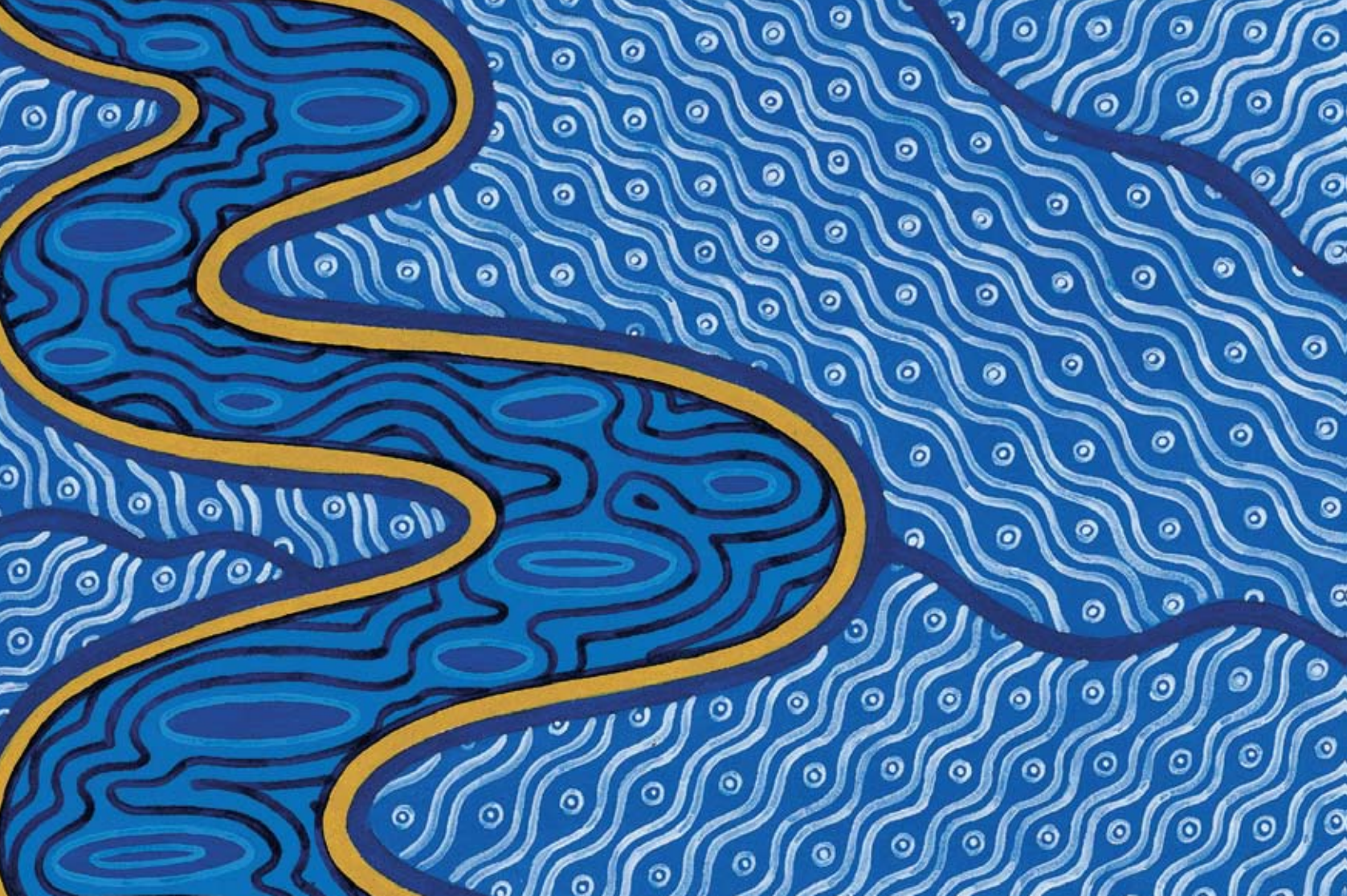
16 Consumer complaints handling

- 16.1** Complaints against “accredited gallery or retailer” made to the City of Melbourne will be dealt with according to the following procedure:
- 16.1.1** the complaint will be recorded in writing and details of the complainant recorded;
 - 16.1.2** the complaint will be reported to the Indigenous Arts Advisory Panel;
 - 16.1.3** the City of Melbourne will confidentially investigate the matter to consider whether it has substance;
 - 16.1.4** if in the City of Melbourne’s opinion, there is sufficient grounds to show that the “accredited gallery or retailer” is in breach of the Code, the City of Melbourne will remove the “accredited gallery or retailer” from the accredited galleries list; and
 - 16.1.5** further action may be taken by way of alerting relevant authorities such as the Australian Competition and Consumer Commission and Consumer Affairs (Vic).

17 Ongoing relevance of the code

- 17.1** The City of Melbourne will review this Code every three years, or as required, to ensure that it remains relevant to the issues and specifics of the Indigenous arts industry in the Melbourne CBD.





Do you have a question for
the City of Melbourne?
Call and speak to us.

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9280 0717 廣東話
9280 0718 Ελληνικά
9280 0719 Bahasa Indonesian
9280 0720 Italiano
9280 0721 國語
9280 0722 Somali
9280 0723 Español
9280 0724 Türkçe
9280 0725 Việt Ngữ
9280 0726 All other languages

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