



Certificates of Authenticity

Description

Authenticity of Indigenous artwork

Authentic Indigenous artwork is artwork that has been made by an Aboriginal or Torres Strait Islander person. The authenticity of an Indigenous artwork is important not only for ethical and legal reasons but because it has significant value in the art market. The problem facing Indigenous artists and communities is how to protect authentic artwork from rip offs made by non-Indigenous people. It can also refer to artwork created by an Indigenous person without proper regard to customary laws. If fake Indigenous artworks are sold, e.g. online as artworks or on merchandise or as souvenirs, there are a number of negative outcomes: the profits from these sales do not go to an Indigenous artist or community, the perception of the quality of Aboriginal & Torres Strait Islander products can be impacted, they can damage the reputation of the artist whose work has been copied and risk offending Indigenous Cultural & Intellectual Property (ICIP). There are a number of systems that have been developed to try to overcome this problem.

What is a Certificate of Authenticity?

A Certificate of Authenticity is a record of an artwork and its creator to ensure that it is an authentic artwork of an Aboriginal or Torres Strait Islander person. It is the "cultural provenance of a work". For more information about authenticity in Indigenous artworks see [Creative Australia's Protocols](#) for using First Nations Cultural and Intellectual Property in the Arts. There is currently no mandatory system regulating how to authenticate works of art made by an Aboriginal or Torres Strait Islander person or group. Individual artists and organisations have created their own certificates of authenticity that are attached to art products. Most Indigenous art centres supply such certificates for artworks created by their members. Certificates of authenticity usually include the artist's name, year of birth, artwork name, size and medium, and a photograph of the artist and of the artwork. It will often include a story about the artwork. Problems that have arisen with certificates include:

1. they do not guarantee that the work is authentic
2. there has been misuse of certificates by commercial galleries which have attached inaccurate certificates; and
3. they can be created by anyone.

A third party regulatory or monitoring body is needed to ensure the certificates themselves are authentic.

What is a 'Code Certificate'?

The Indigenous Art Code (the **Code**) is a voluntary code of ethical behaviour for art dealers (including art centres) operating in the Indigenous art market. One of the requirements for dealers who agree to sign up to this voluntary code of conduct is that any dealer who acts as an agent for an Aboriginal or Torres Strait Islander artist must provide a signed Code Certificate with the sale of artwork (over \$250) which states:

1. that it is an "Indigenous Art Code Certificate"™
2. the name of the artist or artists who created the artwork
3. where and when the artwork was created, to the extent that information is known
4. artwork's size and medium, and the title given to the artwork by the artist (if a title has been given)
5. the identity of the dealer and confirmation that they are "Signatory to the Indigenous Art Code"™; and
6. the dealer's signed declaration confirming the accuracy of the information in the Code Certificate.

The Code Certificate can accompany the artwork through all subsequent sales and is intended to be an ongoing statement about the provenance and authenticity of the work. It is a breach of the Code for a dealer to supply a certificate which is not legitimate. It is hoped that this system will assist not only in creating an objective standard for authenticating genuine Indigenous artworks but will also identify artworks created by artists who have been treated fairly in accordance with the Code. The Indigenous Art Code website provides resources explaining the role of the Code in ensuring honest and ethical conduct by dealers and artists. For more information on the Code see Arts Law's information sheet on the [Indigenous Art Code](#).

What legal action can be taken if someone buys artwork that is not authentic?

If someone buys an artwork that has a certificate or statement of authenticity (whether a private certificate or a Code Certificate) attached to it and he or she later finds out that the work is fake, they

can take legal action against the person who supplied the certificate. Legal actions include:

1. Misleading and deceptive conduct under the federal *Australian Consumer Law* (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) on the basis that the seller incorrectly described the goods sold to the purchaser. For example, if a label is attached to a work made by a non-Indigenous person stating that the work is authentic Indigenous art, the Australian Competition and Consumer Commission (**ACCC**) and the purchaser of the artwork can take court action against the person or business that attached the label or sold the work as authentic Indigenous art.
2. Breach of contract on the basis that the agreement between the seller and the purchaser was not honoured because the purchaser paid for authentic Indigenous art and received something else.
3. Passing off which applies when the seller has falsely attributed a work to a well known Indigenous artist whose reputation is then damaged by the art market believing that he or she has created inferior quality works. The artist could bring an action against the person or business for misrepresenting that the artworks were created by that artist.
4. Where the false certificate purports to be a Code Certificate, the dealer can be reported to the Directors administering the Code who may then impose sanctions on that dealer.

What are the options for the future?

The Arts Law Centre of Australia supports best practice models to deal with authenticity issues. Some possibilities include:

- The introduction of a national system where an authorised body issues certificates of authenticity. Before issuing the certificate, the authorised body must make sure that the artwork meets certain requirements to make sure it is authentic.
- Legislation making the principles in the Code a mandatory code of practice for dealers operating in the Indigenous art industry with the result that the use of Code Certificates would become mandatory and penalties would be imposed for issuing false certificates.
- Following the Fake Art Harms culture campaign run by Arts Law, the Code and Copyright Agency, the federal government investigated the issues raised which in 2022 led to the Productivity Commission recommending that there be a mandatory labelling scheme for inauthentic products.
- The government has announced it will introduce legislation later in 2024 to protect Indigenous art from fake products. We expect this will involve a requirement for some form of certification of authenticity.
- Following the New Zealand model, changes could be made to the *Trade Marks Act 1995* (Cth) to establish a system that recognises and protects Aboriginal and Torres Strait Islander cultural and intellectual property.

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ART FORMS

1. Aboriginal and Torres Strait Islander Culture & Knowledge
2. Visual Arts

LEGAL TOPICS

1. Indigenous cultural & intellectual property

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