Creating Artwork for a Reconciliation Action Plan (RAP)

Why Your Art Matters

Many Australian businesses are required, or choose, to have Reconciliation Action Plans (RAPs) to promote fairness for First Nations people and improve understanding between Indigenous and non-Indigenous people. As a result, often, Aboriginal and Torres Strait Islander artists are asked to create artwork for these plans. Here are some tips to protect your rights and make fair agreements. We want to make the legal part easier for you.

Before Saying Yes:

Before doing business with anyone, think about whether your values align with theirs and if you feel okay about having your work associated with them. This is particularly important when your artwork will be on a RAP. A RAP is a public-facing document about the organisation's commitment to, and relationship with Aboriginal and Torres Strait Islander Peoples. Before saying yes, it is important to ask yourself:

- Do I agree with the company's values?
- Are they genuine in their commitment to reconciliation?
- Am I comfortable having my work associated with them?
- Do I want to see the RAP before agreeing?

Remember: you don't have to enter into any agreement. You can say 'no' and you may prefer to walk away.

Key Things to Check Before Starting

Below is a breakdown of some key things you need to consider when a business approaches you for artwork to use for their RAP:

1. **Scope of Work:** What does the client want the artwork to achieve? Are you creating something new or are they licensing an existing work?
2. **Copyright:** Who will own the artwork? As the artist, you own copyright unless stated otherwise in a contract.
3. **Licensing:** How and where will the artwork be used? For how long?
4. **Infringement:** Ensure your work isn't used without permission.
5. **Moral Rights:** You must be credited, and your work must not be changed in a way you don't like.
6. **Cultural Rights (ICIP):** Protect cultural knowledge and ensure it is used respectfully.
7. **Contracts:** Always get agreements in writing.

Note that if you are assigning copyright, entering into an exclusive licensing arrangement or agreeing to have your moral rights infringed, this has to be in writing.

1. Scope of Work

- Is the client asking for a new design (commission) or to use an existing piece? For new works, get clear details before starting.

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- If you will be licensing your existing work, focus on where and how it will be used.

2. Copyright

- You automatically own the copyright for any original work you create, you don't need to register or pay a fee.
- Selling your artwork doesn't transfer copyright unless stated in a contract.
- Your copyright lasts your lifetime plus 70 years. Others need your permission to use your work.

3. Licensing (how can they use it?)

- A licence explains how someone can use your artwork. Examples:
  Is it just for the RAP document?
  Can it be used online, on posters, or merchandise?
- Licences can be:
  - **Exclusive:** Only the client can use the artwork.
  - **Non-exclusive:** You can still use or sell the work elsewhere.

- Set a clear time limit for usage. RAP durations are typically:
  - Reflect RAP: 12-18 months.
  - Innovate RAP: 2 years.
  - Stretch or Elevate RAP: 3 years.
  - See Reconciliation Australia website for more information.

- Discuss and agree on payment terms. Make sure the money is fair for the licensing rights. Talk to fellow artists and arts organisations to check what 'industry standards' are.

4. Infringement

If your work is used in ways you didn't agree to, seek legal advice. For example, if your design appears on uniforms without your permission, this might be an infringement of your copyright. The best way to avoid this is to have a conversation with the business at the start.

5. Moral Rights

As well as copyright, you also have moral rights in your work.

You have the right to:

- Be credited as the artist.
- Prevent someone else from taking credit for your work.
- Ensure your artwork is not changed in ways that harm its meaning or your reputation.

6. Cultural rights

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Indigenous Cultural and Intellectual Property (**ICIP**) is a term coined by Dr Terri Janke, a Wuthathi, Yadhaigana and Meriam woman and an international authority on Indigenous Cultural and Intellectual Property (ICIP). ICIP is about protecting the cultural knowledge, stories and language in an artwork. It is not separately protected by the law in Australia as at the time of writing, although as of 2024 the Government has made a commitment to introduce new laws. You can stay up to date with developments by subscribing to Arts Law's newsletter here.

- ICIP protects cultural stories, symbols, and knowledge in your work.
- If a client requests cultural elements that aren't part of your community's heritage, you can say no.
- Include ICIP protections in your contracts, such as:
- Notices recognising cultural ownership.
- Rules for respectful use. We recommend Creative Australia ICIP Protocols.

7. Contract

All of the above points should be in a contract. While it is best practice to have any kind of contract in writing, you can also enter a contract – a legally binding agreement – without signing anything. A contract can be in writing (including by text message or email), oral or a combination of both. For more information about go to our website: AITB Contracts.

Arts Law has template contracts than can help you get started:

- For an artwork that already exists – Copyright Licence
- For an artwork that is being commissioned – Artwork Commission and Licence Agreement

You can also seek free legal advice from Arts Law on our website here.

Remember, it's your art, its valuable and you're in control!

Need help? We're here for you

Artists in the Black provides free legal advice to Aboriginal and Torres Strait Islander artists. Visit Arts Law for assistance or to access templates and resources.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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