

## Artists Employed in the Community

All too often, artists working on public art projects face administrative, political and legal difficulty in the execution of their work. This chapter sets out the various matters that should be discussed before such projects are undertaken. It then uses muralists as focus for that discussion.

Community artists are the most lowly paid arts practitioners. The Australia Council's report "The Artist in Australia Today" showed that their average annual income in 1984 was \$4,800. At this level of reward and sustenance, the last thing a community artist needs is legal problems. Whether the artist is a painter, printmaker, muralist, potter, weaver, sculptor, or any other practitioner who works with members of the community, the potential problems are very similar.

Whether working informally with a local group or working as an artist in residence under a more formal umbrella, the primary issue is one of contract. In the first instance it may only be an informal, extra-legal, "social" contract, while an artist in residence is more likely to have a written agreement with the host organisation. In practice the "social" contracts are often more carefully considered and adhered to, perhaps because of the practitioners' commitment to the particular community within which they have chosen to work. Perhaps it is also because many of the umbrella organisations which hire community artists (particularly local councils and universities) pay insufficient attention, or are insufficiently experienced or expert, to ask the right questions or provide sufficient information to facilitate the success of the project. After all, if one party is not clear as to the result they want to achieve or what they are prepared to commit to that goal and the other is not clear as to how they are going to achieve that goal or what resources they will require, it is highly likely that neither party will fully understand the expectations of the other. Both will be dissatisfied.

Enter contract. If a contract is seen as a checklist of the mutual expectations of the parties, it is seen as something that promotes the achievement of the cultural and social goals of the parties. It is not to be viewed as a Dickensian choker. It does not have to be formal, and indeed in many cases would and should not be. It should be simple, clear and comprehensive. In this way, misapprehensions and misunderstandings may be better avoided.

### 1. Artists Employed on Community Projects

The following is a checklist that has been used with much success for some years by both practitioners and institutions. It is geared to "employment" situations, and artists in residence appointments, but many of the questions are also relevant to those artists who are structuring those very important "social" commitments with the community members with which they intend to work.

## COMMUNITY EMPLOYMENT CHECKLIST FOR ARTS EMPLOYEES

### 1. Employer.

#### (a) Who is the employer?

(b) Will the employer nominate one Agent to whom the Artist will be answerable?

2. Term. How long will the Artist be employed for?

3. Job.

(a) What is the Artist expected to do during the project period?

(b) What is expected to be achieved?

(c) Is this feasible?

(d) Has a full brief been prepared?

4. Money.

(a) How much will the Artist be paid? Will tax be taken out?

(b) Who will administer the grant money (if any)?

5. Insurance.

(a) What will be taken out? Public liability? Worker's compensation? Volunteer's cover?

(b) Who by?

(c) Who is paying?

6. Expenses.

(a) Who will pay for expenses incurred on the project?

(b) Which ones? (Specify.)

(c) Will travel, moving expenses or accommodation be paid?

7. Facilities.

(a) What facilities will the Artist need? Specify them.

(b) Who will provide them?

(c) How?

8. Publicity.

- (a) Will the project be promoted or advertised?
- (b) By whom?
- (c) Out of which budget?

9. Consultation.

- (a) Is the Artist expected to consult with particular community members? If yes, who?
- (b) Does the Artist have to report to or consult with the employer?

10. Holidays and sick leave.

- (a) How many days leave will be given?
- (b) On what basis?

11. Hours.

- (a) How many hours per week is the Artist expected to work?
- (b) How many of those hours will be public contact?
- (c) Is flexi-time appropriate?

12. Project design approval.

- (a) Does the Artist have to submit a project design for the approval of the employer?
- (b) How long does the employer have to approve or disapprove?
- (c) If disapproved, will the Artist do further designs?

13. Site.

- (a) Is a particular site or venue required?
- (b) If so, who will choose and prepare it?
- (c) Are any permissions required?
- (d) If so, who will obtain them?

14. Materials.

- (a) What will be needed?
- (b) Who will buy them?
- (c) Where, when and how?

15. Assistance.

- (a) Will the Artist do the job alone?
- (b) If not, who will help?
- (c) Who will choose the helpers?
- (d) Who will be responsible for the helpers?

16. Completion.

- (a) When will the project be "complete"?
- (b) Who will decide?
- (c) Upon what criteria?

17. Ownership. Who will own the finished work?

18. Maintenance. Who is responsible for maintaining the work?

19. Copyright.

- (a) Who will own copyright?
- (b) Why?

20. Documentation and archive.

- (a) Do the parties want records kept of the Work in all its stages?
- (b) Who will do it?
- (c) Who will pay for it?
- (d) Will an archive be kept?

(e) Should there be guidelines as to the permitted uses of the archive?

21. Authorship and attribution.

(a) To whom will attribution be made?

(b) What will be the form of that attribution?

22. Termination. How can the parties get out of the deal?

23. Hold ups.

(a) What will happen if there are hold ups?

(b) Can the term of the contract be extended?

24. Disputes.

(a) What will happen if the parties cannot agree on some aspect of the project?

(b) What procedures will be used to resolve these difficulties?

25. Record of agreement.

(a) What record of this agreement will be made?

(b) Formal contract, letter of agreement, oral agreement followed by letter of confirmation?

## 2. Muralists

Muralists, perhaps more than many other community artists, are usually very aware of the business aspects of their art practice. This comes with the experience of dealing with local councils and building owners for the necessary permissions and commissions as well as with the sponsors which are essential to most mural projects. Muralists who do not quickly develop business attitudes and skills, do not survive for long off their mural income.

Although few muralists are ever actually employed by the commissioner of the mural, the above checklist sets out most of the important questions that must be answered in putting together a mural business plan. However, some further general comment may be useful.

(a) The design stage

The design stage of the project is a difficult one for both parties; the commissioner's decision makers are usually worried about how much the project will cost, both in money, time and administrative resources, as well as what the reaction will be both in the general community and amongst their superiors. They are likely to be rather cautious. For their part, the artists will be both excited by the opportunity and reluctant to say or request anything that would endanger the project.

It is important that the elements of the design stage be set out in some form of agreement so that both parties know what is expected and what to expect.

(i) The brief

It is essential that the commissioner provide a reasonably detailed brief so that the artist can prepare a design that is better able to meet the commissioner's needs and expectations. Should the work be of a particular subject or theme? Where is it to be situated? What size is the wall? What materials will the work consist of? Who is expected to execute it: professional artists or members of the local community under the supervision of the artists? Are there any special requirements?

(ii) Design approval

How many designs does the commissioner wish to choose from and when should they be delivered? Such dates can be very important because, e.g., the designs may have to go before a sub-committee of local council before being put to the council itself for final approval. If that sub-committee only meets every alternate month, the project may be considerably delayed if the deadline is missed.

The artist too, will need a timetable; not only for the presentation of the designs but also the approval or rejection of them. Too many commissioners forget that community artists have to plan their time in the same way as other professionals and that if they are to work on a mural project they will have to plan their schedule. For a busy artist, a project that was feasible a month ago, may not be possible next month.

Both parties need to be able to timetable their affairs.

(iii) Changes to the design

It is important to both parties that the commissioner has the opportunity to request changes and that the artist has the opportunity to modify the original concept in view of the commissioner's contributions and concerns.

It is standard practice that the commissioner pay an additional fee for such alterations. This recognises that the artist's time talent and labour is valuable and cannot be made unlimitedly available without proper reward.

The commissioner's protection is that if the design cannot be satisfactorily settled, the artist will lose a valuable project and the commissioner will be free to select someone else. Both have an incentive to get the design right quickly.

(iv) Fees

Some commissioners attempt to get muralists to provide designs without expecting to pay for the service. The preparation and presentation of preliminary designs is a service to commissioners which demands that the artist apply considerable time, thought, effort and talent. These are the only sources of income for professional artists and payment should be made.

In fact, most artists undercharge for the preparation of designs because they are so scared of losing the opportunity. Even if an artist is willing to tender designs without payment on the off-chance of getting the job, he or she must at least cover expenses and overheads.

(v) Appointment of a representative

Assuming that the commissioner is a corporation, council or other multi-membered body, it is most efficient if it appoints one person, or at most, a sub-committee of three, to make decisions and speak on its behalf. It allows the commissioner to delegate the work to the most appropriate persons and ensures that the artist has a clearly defined channel of communication with the commissioner.

Given that the mural project is likely to take several weeks to complete, the commissioner will need to delegate certain powers to its representative so that the decisions that need to be taken during the course of the project may be taken without expensive and wasteful delay.

(vi) Copyright in the design

Copyright in the design should be retained by the artist. This is virtually non-negotiable. Too often, a commissioner has taken the copyright in a design, dismissed the artist, and then had someone else actually construct the work, using the artist's original designs.

Some commissioners seem to experience a worrying flow of blood to the eyeballs when they hear that copyright in the design is to remain with the artist. Usually this is due to the idea that they are paying for the design and that if they decide not to proceed there is no reason why anyone else should benefit. The response is not based upon charity. Simply, in return for its fee the commissioner has had an artist devise and present a design and receives an exclusive opportunity to have that design executed. If the commissioner also wants the right to prevent anyone else later using its discarded design, the fee will be greater to take into account the wider rights involved.

If the artist does agree to the assignment of copyright in the design there should be included a clause by which the commissioner promises that it will not execute the design using persons other than the artist or those approved by the artist.

More often than not, commissioners seek copyright because they want to keep copies of the design for archive purposes and want to reproduce it say, on the cover of the annual report or for other publicity purposes. These rarely cause difficulty and the agreement can both specify that the artist retains copyright whilst providing for the reasonable needs of the commissioner. It is merely a matter of articulating those needs clearly and expressing them in the agreement.

(vii) Termination

Both parties need to know how they can get out of the agreement and what the consequences would be.

If the commissioner terminates without breach by the artist, the design fee should be payable. Of course, if the artist terminates without breach by the commissioner, no design fee should be payable.

(b) Execution of the mural

Once the design has been approved the artist proceeds to execute that approved design. To do so with minimum fuss, a number of things should be established at the outset.

(i) Timetable

When is work to commence? Some preparation time will be essential to both parties before the on-site work commences. Just as importantly, when is the due completion date? If the mural is to celebrate a particular event or anniversary it may be essential that the work be completed by a nominated date. Other commissions will be more flexible as to timings.

(ii) Adherence to the approved design

Although this is rarely a problem, there are occasions when either the commissioner has second thoughts about the approved design or the artist, in the course of realising the design, considers that it could be improved. No changes should be made without first seeking the approval of the other party and obtaining their consent in writing. This acts to protect both parties.

Inevitably, the completed work will be a little different in various ways from the smaller and less detailed design. This must be expected by the commissioner. A one metre design will evolve somewhat in the process of being transformed into a 20 metre work.

(iii) Fees

In establishing the commission fee it is essential to decide whether it is to include the expenses of the commission or whether the fee and the expenses are to be treated separately. Some larger commissioners prefer to provide the materials or allow the artist to obtain the material using their invoices. This should be stated in the brief.

If the fee is all inclusive, it will be important that the artist receives a fairly large initial payment which will permit the purchase and hire of materials and equipment as well as provide some personal income for the artist. Subsequent instalments should then be paid at agreed stages throughout the course of the project.

(iv) Site preparation and access

Who will be responsible for the preparation of the site? This will vary from case to case. If the project involves a building site, the commissioner may have a considerable amount of work to do in order to allow the work to proceed. In other situations one would expect the artist to prepare the site for the mural.

Together with this, the issue of site access should be discussed. If the mural is to be put on a wall that is owned by someone other than the commissioner (e.g. the wall of a terrace overlooking a council park) access will have to be

arranged by the commissioner (probably in consultation with the artist). If the wall is part of a building site, arrangements will have to be made with the unions, foremen and security agents on site. These negotiations can be very difficult.

(v) Risk of loss or damage

Who is responsible for loss of or damage to the work in progress? In most cases it is to the benefit of commissioners to take out all prudent insurances so that their investment is protected. However, many decide that the potential financial loss does not justify the expense of insurance. One should be aware though that if the studio/storeroom is destroyed by vandals or fire, the materials lost will have to be replaced and the time and labour already invested will have to be spent again.

As commissioners are usually in a far better position to obtain insurance upon satisfactory terms, it is usually advisable for them to take the cover out and build the cost into the overall budget for the project.

(vi) Copyright

The copyright in a mural will remain with the artist unless the agreement specifies otherwise. This can be a very valuable asset for the artist for as the Public Art Squad has shown, reproductions of the murals (say in the form of postcards and books) can provide a secondary source of income and a primary source of business promotion.

Again, if the commissioners wished to have the right to reproduce the mural on their own publicity material or in some other reasonable manner, those specified uses can be included in the agreement.

(vii) Completion

When is a work completed? It is often a matter of contention. To avoid such disputes one should always avoid any formula which contains the words "satisfactory" or "satisfaction". These provide only subjective criteria.

The work is complete when the approved design has been executed. That is generally a matter for the artist's professional opinion, but the commissioner may certainly object if it can be shown that the work was not executed substantially in accordance with the approved design.

(viii) Maintenance and protection of the work

Murals, like all public art, are exposed to a wide range of dangers such as spray-cans, weather and posters. Sometimes they are ruined by neglect or other times by official or unofficial vandalism.

Murals should not necessarily be seen as permanent works of art. Public art should often have an agreed life, during which it should be maintained. Murals usually have a planned life of three to ten years. Sometimes, it can be much shorter.

During the agreed period the work should not be altered, mutilated, distorted or allowed to fall into disrepair. A neglected and vandalised mural brings credit to neither party. Thus the commissioner should undertake to maintain the work for an agreed period (usually in consultation with the artist) and at the end of that period the commissioner

may choose to paint it out altogether. However the artist should be given first opportunity to make any repairs and restorations and be paid a proper fee for doing so.

(ix) Ownership of the mural

It should be made clear who is to own the mural. In some instances, particularly where the mural is on a demountable surface, the artist may want to own the work but in most cases the responsibilities of ownership are most ably borne by the commissioner or a third party. For example if a government funding body pays for the mural and a local council commissions it and the work is painted on the otherwise ugly brick wall of a supermarket, neither the funding body, nor the council would probably wish to own the work. They may require the supermarket, as a condition of their involvement, to assume ownership of the completed work and be responsible for it.

(c) Mural contracts

The following sample contract is commonly used in mural projects although it will of course be varied according to the needs of the project. It is a contract between the commissioner and the muralist (in which the muralist is an independent contractor and not an employee). (A third contract that may accompany such projects is the agreement between sponsor and artist or commissioner: see Chapter 21, "Sponsorship".)

### STANDARD CONTRACT FOR DESIGN AND COMMISSION OF A MURAL

NB: This standard contract provides a structure for the relationship between the muralist and commissioner. It should be amended to fit the individual requirements of each particular situation. All this requires is that both parties acknowledge their consent to the changes by initialling each one.

THIS AGREEMENT is made this ..... day of .....19 ..... between

..... of .....

(the Artist)

and

..... of .....

(the Commissioner)

#### Part One: Design

1. The brief. The Artist shall design a mural ("the Work") according to the following specifications:

Dimensions .....

Materials .....

Theme/subject .....

2. Design and Approval. The Artist shall submit design(s) to the Commissioner on or about the ..... day of ..... 19.....

3. Changes. If the Commissioner requests a change in the design or requests an additional design, the Artist shall submit up to .....additional design(s).

4. Fees. The Commissioner shall pay a design fee of \$..... to the Artist on receipt of the design(s). If requesting any additional design(s) under this agreement, the Commissioner shall, upon receipt, pay the Artist an additional design fee of \$..... for each additional design so provided.

5. Commissioner's representatives. The Commissioner shall advise the Artist in writing within fourteen (14) days of signing of this agreement of the name or names of at least one but not more than three persons who will speak for and bind the Commissioner with respect to any acts required of it by this agreement including approval of drawings and designs, authorisation of payments, acceptance of finished work and changes in the agreement.

6. Copyright. Copyright in all design(s) for the Work is retained by the Artist.

7. Termination.

(a) Prior to delivery of the design(s) either the Artist or the Commissioner may terminate this agreement by notice to the other in writing.

(b) Should the Artist terminate this agreement before the supply of the design(s), no design fee shall be payable.

(c) Should this agreement be terminated after the design(s) has been approved by the Commissioner, by reason of death or disability of the Artist, the Commissioner has the right to commission another Artist to execute the mural using the Artist's design. All other copyright will remain with the Artist or the Artist's estate and payment for the design(s) will be made to the Artist or the Artist's estate.

8. Intention to proceed. The Commissioner shall within ..... days after submission of the design(s) by the Artist, notify the Artist as to the approval of the design(s) and whether it intends to proceed with the execution of the Work.

9. Non-assignability. Neither party shall have the right to assign this agreement without the prior written consent of the other party. The Artist retains the right to assign all moneys due pursuant to the agreement.

10. Disputes. Should any dispute arise concerning any matter referred to in this contract and which is not settled within seven (7) days of the dispute arising, the dispute will be referred to the informal arbitration of two arbitrators, one to be appointed by each party. In the event of the arbitrators disagreeing, the dispute will be referred to an umpire selected by the arbitrators. No further action or suit will be brought by either party until an award has first been obtained by the arbitrators or umpire.

## Part Two: Commission and Sale.

1. Commission. Upon approval of a design for the Work by the Commissioner, the Artist shall execute that approved design.

2. Performance. The Artist shall commence work on or about the ..... day of ..... 19..... and shall complete the Work on or about the ..... day of ..... 19..... . Time for completion will be extended to

cover delays caused by labour strikes, non-availability of necessary materials, shipping delays, severe weather, injury of illness to the Artist, acts of God or delays caused by or omissions of the Commissioner, including any delays or failure to approve the design(s).

3. Design adherence. The completed Work shall adhere substantially (no more than 10 per cent variation) to the approved design referred to in Part One of this agreement, with respect to colour, shape, materials, basic symbols or images.

4. Fees. The Commissioner agrees to pay the Artist the sum of \$..... according to the budget set out in Schedule A of this contract. It will be paid in the following instalments:

(i) One half on the signing of this agreement, and

(ii) One half when the Artist has notified the Commissioner that the Work is completed.

5. Site preparation. Either:

(a) \*The Commissioner is responsible for any site preparation, under the supervision of the Artist; or

(b) \*The Artist is responsible for any site preparation that may be necessary.

\*Delete as required.

6. Access to the site and the Work.

(a) If the work is to be carried out on the Artist's premises, the Commissioner has the right to make reasonable inspection of the Work at any stage of completion upon allowing the Artist reasonable notice.

(b) For any work which is carried out on site, the Commissioner shall arrange for the Artist and his/her Agents to have access to the site at all reasonable times.

7. Design changes prior to completion.

(a) Should the parties agree to change the design after approval of original design(s), a written memorandum of such change shall be signed by both parties. This memorandum shall describe the change and provide for an additional agreed compensation to be paid to the Artist.

(b) Neither party need agree to any requested change unless refusal to agree would render further performance of this contract by the Artist impossible due to the unavailability of materials or unforeseen physical prohibitions.

8. Completion. It is understood that the Artist will use her/his aesthetic skill and judgment to create the Work, and the Commissioner agrees to accept the completed Work unless the Commissioner can show that it was not executed substantially in accordance with the approved design.

9. Risk of loss or damage. Risk of loss or damage to the Work shall be that of the Commissioner unless such loss or damage is due to the negligence of the Artist.

10. Reproduction and copyright. Copyright in the Work shall be owned by the Artist.

11. Title. Legal title to the Work shall pass from the Artist to the Commissioner on the final payment, as outlined in paragraph 4 of this Part, being made to the Artist by the Commissioner.

12. Maintenance. The parties agree that the life of the Work shall be no less than ..... years. During this period, the Commissioner agrees not to destroy, damage, alter or modify the Work in any way whatsoever. At the end of that period, at its own cost, the Commissioner may paint out or otherwise destroy the Work in its entirety but not in part. Furthermore, while the Work remains in place, the Commissioner shall be responsible for the proper cleaning, maintenance and protection of the work.

13. Repairs and indemnity.

(a) All repairs and restoration which are made to the Work during the lifetime of the Artist shall have the Artist's written approval. Such approval shall not be unreasonably withheld. The approval requirement shall be deemed to have been satisfied if the Purchaser writes to the last known address of the Artist and does not receive a reply within eight (8) weeks.

(b) To the extent that it is practicable the Artist shall be given the opportunity to accomplish the repairs for a reasonable fee, except that any repairs due to faulty workmanship or materials that need to be made within one year of completion of the Work, shall be carried out by the Artist to the best of her/his ability, without fee.

14. Termination.

(a) The Commissioner may terminate this agreement at any time prior to the completion of the Work upon giving written notice to the Artist, who shall be entitled to retain payment for all work done up to the date of receiving such notice. The Artist shall also be paid a proportion of the final instalment which would have been due had the Work been completed, based on the stage of completion of the Work which has been reached at the time of termination. In the event of termination by the Commissioner, the Artist shall not be required to make any refund, should the Work be only partially completed.

(b) The Artist may terminate this agreement by notice in writing to the Commissioner if the Commissioner is more than fourteen (14) days late in making any payment. The artist may also bring suit based on the Commissioner's breach of contract, if any. If the Artist terminates the agreement by giving notice where there has been no breach by the Commissioner, the Artist must refund all moneys paid to her/him under this contract by the Commissioner.

(c) Subject to clause 14(d), in the event of termination by either party, the Artist shall retain all copyright in the Work and designs.

(d) This contract will terminate automatically on the death or incapacity of the Artist, in which case the Artist's estate shall retain all payments made and owed to the Artist and the Commissioner shall have the right to keep copies of preliminary designs and to keep the Work in progress for the sole purpose of completing the Work. The Work to be

completed will be completed by an Artist acceptable both to the original Artist/Artist's estate and to the Commissioner. If the Commissioner does not wish to have the Work completed, all copies of the designs, models and the Work in progress will be returned to the Artist/Artist's estate.

15. Non-assignability. Neither party shall have the right to assign this agreement without the prior written consent of the other party. The Artist retains the right to assign moneys due pursuant to the agreement.

16. Disputes. Should any dispute arise concerning any matter referred to in this contract not be resolved within seven (7) days, it shall be referred to the informal arbitration of two arbitrators, one to be appointed by each party. In the event of the arbitrators disagreeing, the dispute will be referred to an umpire selected by the arbitrators. No further action or suit will be brought by either party until an award has first been obtained by the arbitrators or umpire.

Signed: .....

Signed: (the Artist)

Signed: .....

Signed: (the Commissioner)