COPP 8.5 Prisoner Art

Prison

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| Principles As referenced in the Guiding Principles for Corrections Australia 2018:  5.3.2 Prisoner/offender engagement with meaningful prosocial activities is supported and encouraged throughout their sentence. |

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# Scope

This Commissioner’s Operating Policy and Procedure (COPP) applies to all prisons administered by or on behalf of the Department of Justice.

# Policy

Consistent, ethical and transparent processes shall govern the production, display, storage, sale and/or disposal of prisoner arts.

The Department’s [*Partnerships with Purpose: Arts and Rehabilitation*](#_Related_COPPS_and) policy supports and provides the opportunity for positive change, contributes to rehabilitation and reparation and supports the reintegration of prisoners.

Art produced in prison by a prisoner is the intellectual property of that prisoner.

It is acknowledged that Prison art may have cultural, personal or religious significance. Officers shall behave in a manner which reflects respect and sensitivity towards religious, cultural or spiritual beliefs, practices, objects and symbols in accordance with [COPP 9.1 – Cultural, Religious and Spiritual Services](http://justus/intranet/prison-operations/Pages/prison-copps.aspx), when carrying out duties.

# Ownership of Prison Art

### Copyright of all artwork and designs remains with the creator of the work at all times, and the artist retains the untransferable moral rights to be known as the creator of the work, regardless of who funds the materials.

### A prisoner may own the art materials, and the art object created:

1. by purchasing from the prison canteen or art material suppliers
2. by obtaining from outside sources, e.g. parents, partner, external agency
3. when issued by Departmental staff
4. when received by other lawful means.

### The Superintendent shall retain the right to withhold the release of any artwork considered to impede upon the good order and security of the prison[[1]](#footnote-1).

### The quantity of artworks produced by any prisoner remains at the discretion of the Superintendent.

### A Prisoner may authorise the transfer of physical ownership of artwork by providing written consent in the following circumstances:

1. signed out to a visitor in accordance with [section 4](#_Toc373999728)
2. sold in accordance with [section 6](#_Toc373999754), [section 7](#_Purchase_of_Prison) and [section 8](#_Toc373999778)
3. donated in accordance with [section 9](#_Donation_of_Prison).

### Prisoners shall have their artwork confiscated or removed if it is deemed prohibited or inappropriate in accordance with [COPP3.1 – Managing Prisoner Property](http://justus/intranet/prison-operations/Pages/prison-copps.aspx) (e.g. artwork with gang insignia).

### Artwork owned by a prisoner is not permitted to be gifted or signed over to another prisoner.

### The Department recognises the intellectual property and moral rights held by the prisoner artist in respect of their artwork. A prisoner’s artwork will not be reproduced or communicated without their express written permission, except where the artwork is photographed for the purposes of recording the work in the prisoner’s property. The term ‘'communicated' includes the display of artwork by electronic means on an intranet/internet site for the purpose of promoting exhibitions.

### Artworks purchased by the Department in accordance with [section 8](#_Toc373999778) shall be recorded on the [Prisoner Art Asset Register](http://justus/intranet/prison-operations/Pages/copp-adult-forms.aspx). This acquisition form for the Arts Register shall be forwarded to the Arts Coordinator when any additions have been made to a prison’s or the Department’s collection.

# Management of Prisoner Art

### A prisoner’s art may be stored, signed out, confiscated, removed, sold or destroyed in accordance with [COPP 3.1 – Managing Prisoner Property](http://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### The Superintendent shall take into consideration the circumstances of the prisoner when determining the amount of artwork stored in accordance with [COPP 3.1 – Managing Prisoner Property](http://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### Prisoners making a request for their completed artwork to be stored or signed out shall complete a [Request to Store or Sign Out Prisoner Owned Art](http://justus/intranet/prison-operations/Pages/copp-adult-forms.aspx) and attach the form to the artwork they wish to store or sign out. This form provides written verification that the artwork has been produced by the prisoner and records the approximate cost of materials and time spent creating the artwork.

### The Superintendent shall ensure that all artwork placed in the prisoner’s property is recorded on TOMS that includes dimensions with a photograph taken in accordance with [COPP 3.1 – Managing Prisoner Property](http://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### A copy of the artwork photograph and the [Request to Store or Sign Out Prisoner Owned Art](http://justus/intranet/prison-operations/Pages/copp-adult-forms.aspx) shall be placed together with any other documentation in the prisoners property.

### Prisoner artwork submitted for exhibitions shall be photographed by the Arts Coordinator for the Department’s records.

### A limit on the number of artworks a prisoner may sign out shall be determined on a case by case basis by the Superintendent in consultation with the Arts Coordinator.

### Prisoner art may only be sold in accordance with [section 6](#_Toc373999754), [section 7](#_Purchase_of_Prison) and [section 8](#_Toc373999778).

# Damaged or Lost Prisoner Artwork

### Prisoners will be compensated for any artworks damaged or lost by carelessness or negligence by Departmental staff.

### If the damage or loss occurs while the artwork is in a prison or while in the care of prison staff, the prison will be responsible for compensation.

### If the damage or loss occurs while in the care of the Arts Coordinator, Education, Employment and Transitional Services will be responsible for the compensation.

### The Superintendent shall inform the Arts Coordinator and request the artwork be evaluated when prisoner artwork is damaged or lost.

### The Arts Coordinator will arrange for an assessment panel to be convened to evaluate the artwork on a case-by-case basis. The assessment panel shall include the following staff:

1. Arts Coordinator (or Prisoner Education Manager)
2. Relevant Superintendent
3. Prison based Arts Tutor, where relevant
4. External arts industry representative (e.g. Curator Fremantle Arts Centre)

### The figure will be based on evaluation of evidence of past sales, the prisoner’s experience as an artist, the quality of the work, the intended purpose of the work, etc.

### The prisoner may appeal the final evaluation figure to the Assistant Commissioner Rehabilitation and Reintegration.

# Exhibitions

### The Superintendent, in consultation with the Arts Coordinator, may approve artworks owned by prisoners to be entered in exhibitions.

### Prisoners may exhibit samples of their artwork in the following group exhibitions:

### a prison art exhibition organised by the Department

### a TAFE or other higher educational institution exhibition, necessary as part of diploma, certified courses or degree requirements

### other public exhibitions organised by external organisations (e.g. award exhibitions), with prior approval from the Assistant Commissioner Rehabilitation and Reintegration.

### Prisoners are not permitted to exhibit samples of their artwork in a one-person exhibition, except where it is necessary to complete a TAFE, university or other higher educational institution course of study. In such circumstances, prior approval from the Superintendent must be obtained before the exhibition.

### Prisoners may offer their own prison art for sale in exhibitions detailed in [section 6.1.2](#_Prisoners_may_exhibit) and in accordance with this section.

### Prisoners must complete a [Prisoner Exhibition Entry](http://justus/intranet/prison-operations/Pages/copp-adult-forms.aspx) form if they want to exhibit artwork for an approved exhibition. The form is to be witnessed by a relevant education or recreational staff member who is familiar with the artist’s work to verify the ownership of the submitted work.

### Completion of additional forms may be required for particular exhibitions. Further information can be sought from the Arts Coordinator.

### Each prisoner may exhibit a maximum of ten items of prison art per year. The Superintendent, in consultation with the Arts Coordinator, may approve additional items.

### The proceeds of any sale of prisoner artwork or from any cash prizes won by prisoners for their artwork shall be paid into the prisoner’s account. No administration fee will be charged by the prison however an outside gallery may take a commission from the sale of prisoner artwork. Permission to hold monies over the limit set in accordance with [COPP 8.4 – Prisoner Finances](http://justus/intranet/prison-operations/Pages/prison-copps.aspx) shall be at the Superintendent's discretion.

### The proceeds from the sale of the prisoner’s artwork shall be paid into the prisoner's private account if the prisoner has been released at the time of payment.

### Exhibited artworks shall not be removed from the exhibition until the closing date of the exhibition, unless with the agreement of the Arts Coordinator. On closure of the exhibition, unsold items shall be returned to the prison where the prisoner is currently located. Where ongoing storage is impractical, the Superintendent may direct the prisoner to have surplus items signed out.

### The prisoner is responsible for arranging the collection of unsold artworks with the Arts Coordinator, in the event they are released from prison prior to the end of the exhibition.

# Purchase of Prison Art by Staff

### Prison staff may only purchase artwork by prisoners through an approved exhibition/gallery process.

# Commissioned Work

### Departmental staff (including management and prison staff) may not request artwork to be commissioned for personal use.

### Prisoner artwork may be commissioned for official Departmental business requirements and by external agencies.

### The Commissioner must approve all commissioned artwork.

### All artwork commission requests must be made to the Commissioner in writing.

### The decision to approve the request will include consultation with the Arts Coordinator and relevant Superintendent.

### If the request is approved, the Arts Coordinator will be responsible for facilitation of the request.

# Donation of Prison Art

### Prison art owned by prisoners may be donated by prisoners to external agencies such as charities or similar organisations where the Assistant Commissioner Rehabilitation and Reintegration has granted prior approval.

### Prison art owned by prisoners may be donated to the Department.

### Prison art owned by the Department may be donated to external agencies such as charities or similar organisations at the discretion of the Superintendent or relevant Assistant Commissioner, in consultation with the Arts Coordinator.

### An [Art Donation Consent Form](http://justus/intranet/prison-operations/Pages/copp-forms.aspx) must be completed by a prisoner prior to artwork being donated.

### When artwork owned by the Department is donated to another agency or otherwise deaccessioned, the staff member responsible shall ensure the [Prisoner Art Asset Register](http://justus/intranet/prison-operations/Pages/copp-adult-forms.aspx) is completed and forwarded to the Arts Coordinator. The register shall be forwarded to the Arts Coordinator.

# Annexures

## Related COPPs and documents

**Related COPPs**

* [COPP 3.1 – Managing Prisoner Property](http://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 8.4 – Prisoner Finances](http://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 9.1 – Cultural, Religious and Spiritual Services](http://justus/intranet/prison-operations/Pages/prison-copps.aspx)

**Related documents**

* [Partnerships with Purpose: Arts and Rehabilitation](#_Related_COPPS_and)

## Definitions and acronyms

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| Term | Definition |
| Arts Coordinator | Position in Educational and Vocational Training Unit within the Department of Justice. |
| A Commissioned Work | A Commissioned art work is created in response to a request or contract in return for payment. |
| Commissioner’s Operating Policy and Procedures (COPP) | COPPs are policy documents that provide instructions to staff as to how the relevant legislative requirements are implemented. |
| EVTU | Educational and Vocational Training Unit |
| Guiding Principles for Corrections in Australia, 2018 | The guidelines and the accompanying principles constitute outcomes or goals to be achieved, rather than a set of absolute standards or laws to be enforced. They represent a statement of intent that each Australian State and Territory can use to develop their own range of relevant legislative policy and performance standards to reflect best practice and community demands. |
| Prisoner Art | Includes all visual arts (e.g. drawings, paintings, carvings, and sculpture), that a prisoner may make in education or recreational art classes, in their own time, as part of a Justice Education Through Art (JETA) course. |
| Prisoner | Any person in lawful custody and referred to as a prisoner in s. 3 [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html); also includes a person not yet in the custody of a prison, but in the custody of a Contractor under the *Court Security and Custodial Services Act 1999*. |
| Superintendent | The Superintendent as defined in s. 36 [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html) includes any reference to the position responsible for the management of a private prison under Part IIIA [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html). Does not extend to the Officer in Charge of a Prison |
| TAFE | Technical and Further Education |

## Related legislation

* *Prisons Act 1981*
* *Prisons Regulations 1982*

# Assurance

Compliance with this COPP should align with the Department’s [Assurance Framework](http://justus/intranet/department/AuditRiskAssurance/risk-assurance-framework-CS.pdf). It is expected that:

* Prisons will undertake local compliance in accordance with the Compliance Manual.
* The relevant Deputy Commissioner will ensure that management oversight occurs as required.
* Monitoring and Compliance Branch will undertake checks in accordance with the Operational [Compliance Framework.](https://justus/intranet/department/standards/Pages/monitoring.aspx)
* Independent oversight will be undertaken as required.

# Document version history

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| Version no | Primary author(s) | Description of version | Date completed | Date Effective |
| 1.0 | Operational Policy | Approved by the A/Director Operational Projects, Policy, Compliance and Contracts | 7 July 2021 |  |
| 2.0 | Operational Policy | Scheduled Review Approved by the A/Director Operational Projects, Policy, Compliance and Contracts | 11 August 2023 | 11 August 2023 |

1. s 36 *Prisons Act 1981* [↑](#footnote-ref-1)