

Senate F&PA Committee

Tabled Document

Inquiry: SUPP. ESTIMATES 2019/20 107

Date / Time: 25/10/2019; 11:41AM

Witness Name: MR RAY GRIGGS AO CSC

LICENCE Organisation: NIAA

THIS Agreement is made the 17th day of DECEMBER 2001

PARTIES

Harold Thomas, whose address is [REDACTED]
[REDACTED] (the Artist)

AND

the ABORIGINAL AND TORRES STRAIT ISLANDER
COMMISSION, a body corporate established under the *Aboriginal
and Torres Strait Islander Commission Act 1989* having its principal
place of business at Lovett Tower, Woden in the Australian Capital
Territory ('ATSIC');

BACKGROUND

- A. The Artist is the owner of copyright in the artwork reproduced and described in Item 1 of Schedule 1.
- B. ATSIC wishes to use the artwork on material created by or at the order of ATSIC and on material with which ATSIC wishes to associate itself.
- C. The Artist has agreed to license his copyright in the artwork to ATSIC in consideration of the fee and other terms and conditions set out in this Deed.

IT IS AGREED AS FOLLOWS

1. INTERPRETATION

1.1 Definitions

In the interpretation of this Agreement, unless the contrary intention appears:

'Agreement' means this agreement and any schedules or annexures to it.

"Disc Format" means any format suitable for use in electronic information storage or retrieval (such as disc, tape, CD-ROM or CDI) in existence now or in the future other than an On-Line Format;

'Intellectual Property' means copyright and all rights relating to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

"Material" means books, magazines, posters, film, and material in Disc Format and On-Line Format, but does not include, for example, stationery, recruitment advertisements or other routine administrative documents;

"Moral Rights" means the personal rights of integrity and/or attribution enjoyed by an originator of a work, and includes those rights set out in Part IX of the *Copyright Act 1968* and any rights of an analogous nature which may exist from time to time under the law of any country;

"On-Line Format" means any service for carrying or transmitting data or communications by means of guided or unguided electromagnetic energy or both (including the Internet but not ATSIC's proprietary data network); and

o "Work" means the artwork reproduced at Attachment A and any modifications to the artwork permitted under this Agreement.

Unless the contrary intention appears,

- a. clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- b. a cross reference to a clause number is a reference to all its subclauses;
- c. words in the singular number include the plural and vice versa;
- d. words importing a gender include any other gender;
- e. a reference to a person includes a partnership and a body whether corporate or otherwise;
- f. a reference to a clause or subclause is a reference to a clause or subclause of this Agreement; and
- g. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2. LICENCE

The Artist grants to ATSIC and the Regional Councils established by the *Aboriginal and Torres Strait Islander Commission Act 1989* and any bodies of elected Indigenous representatives that may succeed them a non-exclusive irrevocable worldwide licence to reproduce the Work for any non-commercial purpose associated with the performance of their functions by them or by other persons authorized by them. The reproduction shall be as prescribed in Item 2 of Schedule 1.

3. LICENCE FEE

In consideration of the licence granted under clause 2, ATSIC shall pay to the Artist [redacted] payable on signing of the licence and receipt by ATSIC of a correctly rendered invoice from the Artist.

4. WARRANTY

- 4.1 The Artist warrants that he is entitled to grant the licence in clause 2 and that acts done by ATSIC (or by its agent) in accordance with this Agreement do not infringe the copyright of any person.

[redacted]

[redacted]

4.2 The Artist shall indemnify and shall, at all times, keep indemnified ATSIC, its officers, employees and agents against any and all liability, loss, damage, costs awarded by a court, tribunal or arbitrator, the cost of any settlement, compensation, or reasonable expense whatsoever incurred by them, arising out of any action, claim or proceeding brought by a third party in respect of an infringement or alleged infringement of that third party's copyright where the infringement arises out of any use, possession, reproduction, or modification of the Work as provided for in this Agreement.

4.3 ATSIC shall notify the Artist in writing as soon as practicable of any claim or demand made, or action, suit or proceeding threatened or brought, against ATSIC arising from the infringement or alleged infringement referred to in Clause 4.2.

5. COPYRIGHT

ATSIC shall not make any claim or take any action that could affect the Artist's copyright in the Work.

6. ATTRIBUTION

6.1 Except as provided in clause 6.2, the Artist waives all Moral Rights in relation to the Work.

6.2 ATSIC shall include an acknowledgment and attribution of the Artist in any Material produced by it that reproduces the Work. The acknowledgement and attribution will be in the form set out at Item 3 of Schedule 1.

7. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes any prior negotiations, discussions or agreements between the Parties concerning its subject matter.

8. SEVERABILITY

8.1 Each provision of this Agreement and each part of it shall, unless the context otherwise requires, be construed as a separate and severable provision or part. If any provision or part is void or otherwise unenforceable for any reason then that provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

9. APPLICABLE LAW

This Agreement shall be construed in accordance with the law of the Northern Territory and the courts of that place have jurisdiction to entertain any action in respect of, or arising out of, the Agreement.

10. DISPUTE RESOLUTION

10.1 Subject to clause 10.4, before resorting to external dispute resolution mechanisms, the parties shall attempt to settle by negotiation any dispute in relation to this Agreement.

10.2 If a dispute is not settled by the parties within 10 working days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.



- 10.3 Notwithstanding the existence of a dispute, each party shall continue to perform its obligations under this Agreement.
- 10.4 A party may commence court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief.
- 10.5 This clause shall survive the expiration or termination of this Agreement.

11. NOTICES

- 11.1 Any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and dealt with as follows:
- a. if given by the Artist to ATSIC - addressed and forwarded to the Chief Executive Officer, for the attention of the Project Officer at the address indicated in Schedule 2 or as otherwise notified by the Project Officer.
 - b. if given by ATSIC to the Artist - signed by the Project Officer and forwarded to the Artist at the address indicated at the commencement of this Agreement or as otherwise notified by the Artist.
- 11.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid security post, facsimile or telex, to the address of the party to which it is sent.
- 11.3 Any notice, request or other communication will be deemed to be received:
- a. if delivered personally, on the date of delivery;
 - b. if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
 - c. if sent by facsimile, on the business day next following the day of despatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of despatch that the transmission was illegible.

Executed as an Agreement on the date first abovementioned.

Signed by Harold Thomas
in the presence of

(name of witness)

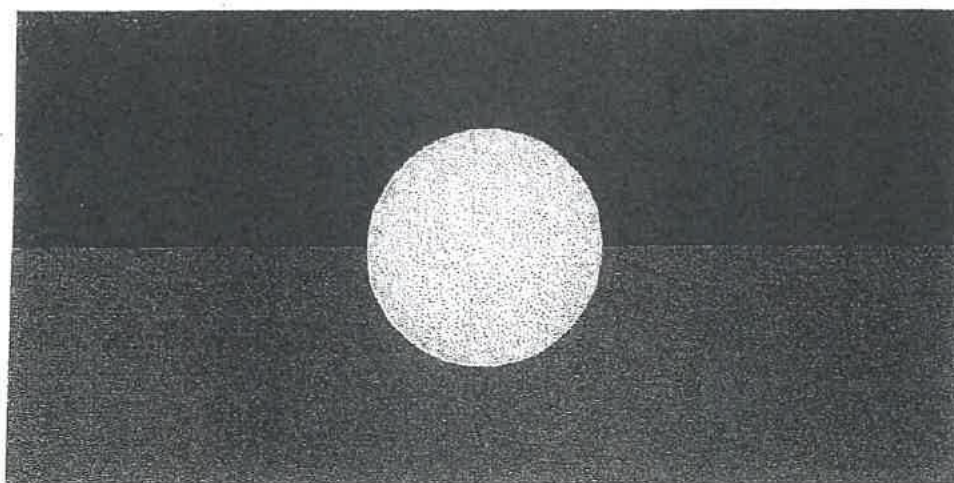
Signed on behalf of the
Aboriginal and Torres Strait Islander Commission
by ...

In the presence of:

(name of witness)

Schedule 1

Item 1 – the Work



Item 2 – Manner of Reproduction

- A. The proportions of each reproduction of the Work shall be length/height = 2/1.
- B. When reproduced in colour the colours shall be:
- Lower half – Scarlet Red, representing the red Earth, Aboriginal spiritual relationship to the land and red ochre used in ceremonies.
 - Upper half – Black, representing the Aboriginal people, past, present and future.
 - Centre Circle – Cadmium Yellow, representing yellow ochre and the Sun the giver of life.

Item 3 – Form of Acknowledgement and Attribution

Aboriginal Flag reproduced by permission of the author Harold Thomas © 1971



Schedule 2

Project Officer

The project officer shall be the person for the time-being holding, occupying or performing the duties of Executive Policy Officer, Treaty Secretariat, National Policy Office, currently [REDACTED] available on telephone number (02) 6121 4678 or facsimile number (02) 6285 2692. The current address for the project officer is National Policy Office, Aboriginal and Torres Strait Islander Commission, PO Box 17 Woden ACT 2606.

[REDACTED]

[REDACTED]