

Resale Right for Visual Artists Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Resale Right for Visual Artists Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The bill's purpose is to establish an Artist Resale Royalty (ARR) scheme in New Zealand. This scheme would give a mandatory resale right to eligible visual artists. Eligible visual artists (or their successors) would be entitled to receive a royalty payment each time their qualifying artwork was sold on the secondary art market.¹ The royalty payments would be collected and distributed by a non-governmental collection agency.

The bill would meet New Zealand's obligation under the New Zealand–United Kingdom Fair Trade Agreement to introduce a reciprocal ARR scheme within 2 years of the FTA coming into force in 2023. The New Zealand–European Union FTA also commits New Zealand to introduce an ARR scheme within 2 years of that FTA coming into force.

¹ Resales would be eligible for the royalty if their value was equal to or above a specified minimum threshold. This threshold would be set by the regulations, but must sit within the range of \$500 to \$5,000.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Amendments to definitions

Definition of the term “visual artwork” should be clearer

Clause 8 would set the definition of “visual artwork” for the purposes of the ARR scheme. The definition as introduced states that a “visual artwork” is any visual artwork that is not a building, literary work, dramatic work, musical work, or other form of artwork specified in the regulations. Clause 8 includes a list of examples to illustrate what forms of artwork are included in this term.

We think the definition of “visual artwork” should be clearer to ensure that it captures all the forms of artwork that are intended to be eligible for the resale royalty. Consequently, we recommend amending clause 8 to specify that multimedia artworks and video artworks are included in the definition. To implement this change, we recommend changing the definition to list the types of artwork that would be eligible and those that would be excluded. The examples listed in the bill as introduced would be deleted, and would instead be included in the definition itself.

Definition of a “professional resale” should include resales involving public archives and libraries

Clause 9 sets out the conditions under which a resale of an original visual artwork would qualify for the ARR scheme, and therefore attract a royalty payment. Under clause 9 as introduced, a qualifying resale must be either a “professional resale” or a “voluntary qualifying resale”.² A “professional resale” is defined as any eligible resale involving an art market professional or a publicly funded art gallery or museum.

We believe that eligible resales involving similar institutions, such as public archives and libraries, should also be included within the scope of the ARR scheme. Public archives and libraries, like public museums and galleries, often purchase artwork for their collections to provide a public service or public good. We recommend amending clause 9(2) so that eligible resales involving public archives and libraries are captured

² A resale would be a “voluntary qualifying resale” if all the parties to the resale agreed that it was a qualifying resale under the ARR scheme.

by the definition of “professional resale”. This would enable these resales to qualify under the ARR scheme.

Examples of “art market professionals”

Clause 11 defines the term “art market professional” as a “person who is in the business of dealing in visual artworks”. Clause 11 includes a list of examples of what professions would be included in this term. We consider that the definition is not clear enough as to whether it includes private commercial art galleries. Therefore, we recommend amending the definition to include owners or operators of art galleries that deal in visual artworks, or any other person in the business of dealing in visual artworks. We recommend deleting the list of examples, and instead including them within the definition itself.

The artist’s successor who holds the resale right should meet residency requirements

Clause 14 sets out who would hold the resale right in the event of the artist’s death, and how this right would be transferred. Under clause 7(c), artists would be made eligible for the ARR scheme if they are citizens or residents of New Zealand or of countries with which New Zealand has a reciprocal ARR scheme. As introduced, clause 14 would not require an artist’s successor to meet the same residency requirement.

We consider that the eligibility requirements put on an artist’s successor should be consistent with the requirements on the artist. We also see a risk that the collection agency could face an undue workload if the successor was not subject to the residency requirement. It might not be feasible for the collection agency to track down a successor who had no connection to New Zealand. Consequently, we recommend amending clause 14 so that the successor holding the resale right would be subject to the same eligibility requirements as the artist.

Process for the collection agency to discharge its liability in relation to royalties paid overseas

Clause 18 sets out when the collection agency’s liability to pay resale royalties to the right holder would arise, and when the liability would be discharged. Clause 18(3) states that this liability would be discharged once the total royalty amount has been paid to the right holder.

We do not think the bill adequately accounts for cases in which a qualifying resale is made in New Zealand of artwork by an artist from a country with a reciprocal ARR scheme.³ In such circumstances, the intent is for the liability to be discharged at the point that the New Zealand collection agency distributes the royalties to the appropri-

³ Clause 7(c) would make citizens or residents of countries with which New Zealand has a reciprocal ARR scheme eligible for the resale right.

ate overseas collection agency. The overseas collection agency would then make the payment to the artist.

We think that the bill as introduced is not clear as to when the collection agency's liability would be discharged when it is distributing royalties overseas. We recommend amending clause 18 to specify that the liability of the collection agency would be discharged once the total royalty amount was paid to the overseas collection agency in the relevant reciprocating country.

Amendments to regulation-making powers

The Regulations Review Committee reported to us on the regulation-making powers contained in clauses 19, 20, 22, and 28. We discuss the issues it raised below.

How a declined resale royalty payment may be used

Clause 19 would allow a right holder to decline to receive payment of all or part of a resale royalty. Despite this, the collection agency would still have to collect the resale royalty. In the event that a royalty was declined, clause 19(2) would require the collection agency to manage the royalty "in the manner specified by the regulations".

The Regulations Review Committee noted that the bill as introduced does not prescribe any limitations to this regulation-making power. It expressed concern that the collection agency would be able to use funds from declined royalties in any way it thought fit. We share this concern. Accordingly, we recommend amending clause 27 to specify some parameters around what the collection agency could use declined, or unclaimed, resale royalties for. In the event that the resale royalty is declined or the resale right holder cannot be found, we recommend that the collection agency be required to either:

- transfer the resale royalty amount to the cultural fund⁴
- return the resale royalty amount to the person who paid the resale royalty
- use the resale royalty amount to fund its activities related to the ARR scheme (if the person who paid the resale royalty cannot be found).

Our proposed amendments would increase the transparency of the ARR scheme and ensure that declined and unclaimed royalties were managed legitimately, within the intentions of the scheme.

Specified percentage to be retained by the collection agency

Clause 20 provides that the collection agency would be entitled to retain, as an administrative fee, a specified percentage of the resale royalties that it collects. The specified percentage would be set by regulations. Clause 20(3) provides for two ways of specifying the percentage. The regulations may:

⁴ The cultural fund would be established and operated by the collection agency and would hold funds that could be used for the purpose of supporting the career sustainability of visual artists.

- (a) specify the percentage; or
- (b) authorise the Minister, by notice in the *Gazette*, to specify the percentage in accordance with the process specified in the regulations.

The Regulations Review Committee noted that it is not clear why the bill provides for two different methods to specify the percentage. It suggested we consider whether this clause should be amended to either clarify when each method should be used, or simply specify one method. We consider that it would be simpler if there was only one method to specify the percentage. Therefore, we recommend deleting clause 20(3)(b) so the percentage would be specified by regulations.

We also think that the collection agency should be consulted on the percentage so it could advise the Minister about its operational and administrative costs. Therefore, we recommend inserting clause 20(3) to require the Minister to consult the collection agency before recommending that regulations be made to specify the percentage.

We consider that this requirement to consult should not apply when the fee is set for the first time, because the collection agency would not yet have been appointed. We recommend inserting clause 4 in the bill's Schedule to specify this. It is expected that Cabinet would decide the initial percentage fee based on the ministry's estimation of the collection agency's likely operating costs.

Appointment of the collection agency

Clause 22 would empower the Minister to appoint a collection agency for the ARR scheme. The appointment process would be set by or under the regulations. Clause 22(6) provides that the regulations may:

- (a) specify the process for appointing a collection agency; or
- (b) authorise the Minister, by notice in the *Gazette* and subject to any criteria or conditions specified in the regulations, to specify a process for appointing a collection agency.

As with clause 20, it is unclear why clause 22 provides two mechanisms for setting out an appointment process. We were advised that the underlying intent is to enable the Minister to determine the appointment process. On this basis, we recommend deleting clause 22(6) so that the appointment process would not be specified by the regulations. We recommend a further amendment to clause 22(3) to add a requirement that the Minister must consider or be satisfied of any matters specified in the regulations before appointing the collection agency.

Collection agency should be subject to the Official Information Act, the Ombudsmen Act, and the Public Records Act

The Chief Ombudsman submitted that the collection agency should be subject to the Official Information Act 1982 and the Ombudsmen Act 1975. We agree that, since the collection agency would be performing a public function, it should be subject to the same accountability mechanisms that apply to public sector bodies. We understand that similar private or non-governmental entities that carry out public functions,

such as Netsafe or Agriculture New Zealand Limited, are subject to public accountability legislation such as the Official Information Act.

Consequently, we recommend amending clause 22 to provide that the collection agency would be subject to the Official Information Act, the Ombudsmen Act, and the Public Records Act 2005 in respect of its public functions under the bill. As the collection agency would be a non-governmental organisation, we do not consider it appropriate that all of its functions be subject to these Acts, just those that relate to administering the ARR scheme.

Appendix

Committee process

The Resale Right for Visual Artists Bill was referred to the committee on 28 March 2023.

We called for submissions on the bill with a closing date of 27 April 2023. We received and considered submissions from 54 interested groups and individuals. We heard oral evidence from 6 submitters at hearings in Wellington and via videoconference.

We received advice on the bill from the Ministry for Culture and Heritage. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 19, 20, 22, and 28.

Committee membership

Angie Warren-Clark (Chairperson)

Karen Chhour

Dr Liz Craig

Dr Emily Henderson

Anahila Kanongata'a

Ricardo Menéndez March

Terisa Ngobi

Maureen Pugh

Hon Louise Upston

Simon O'Connor participated in our consideration of this bill.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Carmel Sepuloni

Resale Right for Visual Artists Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resale Right for Visual Artists Act **2023**.

2 Commencement

- (1) This Act comes into force— 5
- (a) on a single date appointed by the Governor-General by Order in Council;
or
- (b) on 1 December 2024, if it has not commenced by then.
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is—

- (a) to provide a right for eligible artists and successive right holders to receive a royalty on qualifying resales of original visual artworks; and 15

- (b) to enable royalties to be administered in a way that—
 - (i) acknowledges and respects the role of Māori as tangata whenua and provides culturally appropriate support to Māori artists; and
 - (ii) is inclusive of, and recognises the different needs of, all peoples in New Zealand.

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4 Interpretation

In this Act, unless the context otherwise requires,—

art market professional has the meaning set out in **section 11**

collection agency means the person appointed as the collection agency under **section 22**

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expiry date, in relation to the period during which a qualifying resale of an original visual artwork creates a resale right, has the meaning set out in **section 15**

New Zealand citizen has the same meaning as in section 4 of the Immigration Act 2009

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original visual artwork has the meaning set out in **section 8(1)**

professional resale has the meaning set out in **section 9(2)**

qualifying resale has the meaning set out in **section 9(1)**

reciprocating country means an entity that is specified in an Order in Council made under **section 28**

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regulations means regulations made under **section 27**

resale, in relation to a visual artwork, does not include the first transfer of ownership of the artwork, irrespective of whether the first transfer of ownership was made for money or other consideration

resale right means the right described in **section 7**

25

resale royalty means the royalty described in **section 7**

resale value has the meaning set out in **section 10**

right holder, in relation to a resale right that arises under **section 7**, means—

- (a) the artist, if they are alive at the time that the contract for the qualifying resale is entered into; or
- (b) the person who holds the artist's resale right after their death and at the time that the contract for the qualifying resale is entered into (*see section 14*)

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visual artwork has the meaning set out in **section 8(2)**

voluntary qualifying resale has the meaning set out in **section 9(3)**.

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5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in the **Schedule 1** have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

5

Part 2

Resale right for visual artists

Resale right

7 Eligible artists have resale right

- (1) An eligible artist has a right to be paid a royalty on the resale of a visual artwork if— 10
 - (a) the visual artwork is an original visual artwork by that artist (*see section 8*); and
 - (b) the resale is a qualifying resale (*see section 9*); and
 - (c) the contract for the resale is entered into on or before the expiry date of the period during which the right may apply (*see section 15*); and 15
 - (d) either—
 - (i) the artist is alive at the time that the contract for the resale is entered into, and they are eligible at that time; or
 - (ii) the artist is not alive at that time, but they were eligible at the time of their death. 20
- (2) The artist is **eligible** if they are one of the following at the necessary time:
 - (a) a New Zealand citizen, ~~as defined in section 4 of the Immigration Act 2009~~; 25
 - (b) a person domiciled or resident in New Zealand;
 - (c) a citizen or subject of, or a person domiciled or resident in, a reciprocating country.
- (3) An artist has a right under this section irrespective of whether they are or were the first owner of copyright in the artwork.
- (4) A person other than the artist may hold the right after the artist's death (*see section 14*). 30

8 Meaning of original visual artwork

- (1) An artwork is an **original visual artwork** if it is—
 - (a) a visual artwork created by, or under the authority of, an artist; or

- (b) one of a limited number of copies of a visual artwork made by that artist or under their authority.
- (2) In this Act, **visual artwork** means ~~any visual artwork that is not —~~
- (a) ~~a building, as defined in section 2(1) of the Copyright Act 1994:~~
 - (b) ~~a literary work, dramatic work, or musical work, as those terms are defined in section 2(1) of the Copyright Act 1994:~~ 5
 - (c) ~~any other class of artwork that is specified by the regulations:~~
 - (a) includes a visual work of any 1 or more of the following types:
 - (i) a cultural expression of Māori:
 - (ii) a cultural expression of Pacific peoples: 10
 - (iii) ethnic or cultural art that is a variation of a type of work described in any of **subparagraphs (iv) to (ix)**:
 - (iv) a painting, drawing, carving, engraving, etching, lithography, woodcutting, or printing (including a book of prints):
 - (v) a sculpture, collage, or modelling: 15
 - (vi) craftwork, ceramics, glassware, jewellery, textiles, weaving, metalware, or furniture:
 - (vii) photography or video art:
 - (viii) multimedia art:
 - (ix) art that is created using computers or other electronic devices; but 20
 - (b) does not include—
 - (i) a building, as defined in section 2(1) of the Copyright Act 1994:
 - (ii) a dramatic work or musical work, as those terms are defined in section 2(1) of the Copyright Act 1994:
 - (iii) a literary work, as defined in section 2(1) of the Copyright Act 1994, unless it is a compilation that includes a visual work of a type specified in any of **paragraph (a)(i), (ii), or (iv) to (ix)**: 25
 - (iv) a work of a type specified in the regulations.

Examples

The following are examples of visual artworks (to the extent that they are not excluded by this subsection): 30

- (a) visual works of cultural expression of Māori:
- (b) visual works of cultural expression of Pacific peoples:
- (c) paintings, drawings, carvings, engravings, etchings, lithographs, woodcuts, and prints (including books of prints): 35
- (d) photographs, sculptures, collages, and models:
- (e) works of art in the form of crafts, ceramics, glass-ware, jewellery, textiles, weaving, metalware, and furniture:

-
- (f) ~~visual works of art created using computers or other electronic devices;~~
 - (g) ~~visual works of art that are an ethnic or cultural variety of any of the works described in **paragraphs (c) to (f)**.~~
-

9 Meaning of qualifying resale

- (1) A resale of an original visual artwork is a **qualifying resale** if— 5
 - (a) it is a professional resale or a voluntary qualifying resale; and
 - (b) the resale value is no less than the amount specified by the regulations, which must be within the range of \$500 to \$5,000.
- (2) A resale is a **professional resale** if— 10
 - (a) at least 1 ~~party to~~ person involved in the resale is— 10
 - (i) an art market professional acting in that capacity; or
 - (ii) a publicly funded art gallery; or
 - (iii) a publicly funded museum ~~whose primary purpose includes the collection and display of~~, library, or archive that collects and displays artworks; and 15
 - (b) the resale has a connection to New Zealand, in that—
 - (i) the person described in **paragraph (a)** is resident, incorporated, registered, or carrying on business in New Zealand; and
 - (ii) the resale relates to that part of the person's dealings in visual artworks that occur (in part or otherwise) within New Zealand. 20
- (3) Any other resale may be a **voluntary qualifying resale** if— 25
 - (a) all the parties to the resale agree in writing that the resale is a qualifying resale for the purpose of this Act; and
 - (b) the agreement records the percentage of the resale value that the parties agree will be payable as a resale royalty (*see section 16*); and
 - (c) the agreement records which party will provide information about the qualifying resale to the collection agency (*see section 21*). 25

10 Meaning of resale value

- (1) In this Act, **resale value**, in relation to a qualifying resale of an original visual artwork, means the value of the consideration given for the visual artwork under the contract for resale, which may include— 30
 - (a) an amount paid in New Zealand dollars:
 - (b) if an amount is paid in a currency other than New Zealand dollars, that amount converted to New Zealand dollars at the Reserve Bank of New Zealand reference rate as at the date of payment: 35
 - (c) the value of goods or services paid in kind.
- (2) However, **resale value** does not include—

- (a) goods and services tax payable under the Goods and Services Tax Act 1985; or
- (b) any duty, tax, fee, charge, or levy imposed on goods under the Customs and Excise Act 2018; or
- (c) any costs associated with the resale, for example, a commission or a buyer's premium. 5

11 Meaning of art market professional

In this Act, **art market professional** means ~~a person who is in the business of dealing in visual artworks~~; any 1 or more of the following:

- (a) a person who carries on business as an auctioneer (within the meaning of section 5(3) of the Auctioneers Act 2013): 10
- (b) an art dealer:
- (c) an art consultant:
- (d) the owner or operator of an art gallery that deals in visual artworks:
- (e) any other person who is in the business of dealing in visual artworks. 15

Examples

~~The following are examples of art market professionals:~~

- (a) ~~persons who carry on business as an auctioneer (within the meaning of section 5(3) of the Auctioneers Act 2013) and who specialise in visual artworks:~~
- (b) ~~art dealers:~~ 20
- (c) ~~art consultants whose business includes dealing in visual artworks.~~

Nature of resale right

12 Right held in shares where artwork created jointly

- (1) This section applies if a resale right arises in relation to an original visual artwork that is created jointly ~~by the collaboration of 2 or more artists (joint artists)~~. 25
- (2) The resale right—
 - (a) belongs only to those joint artists who are eligible at the necessary time (*see section 7(1)(d) and (2)*); and
 - (b) is held by those eligible joint artists in equal shares or in any other shares that are specified in a written agreement signed by or on behalf of all of the eligible joint artists. 30

13 Right is inalienable while held by artist

- (1) This section applies to a resale right while it is held by the artist.
- (2) The resale right cannot be waived, assigned, or charged. 35
- (3) Any waiver or assignment of, or charge over, the resale right is void.

- (4) See **section 19**, which enables a right holder to decline to receive payment of a resale royalty.

14 Who holds right after artist's death

- (1) This section sets out who holds an artist's resale rights after their death.
- (2) The resale right that arises on a qualifying resale is held by the successor of the resale rights but only if, at the time that the contract for the qualifying resale is entered into,— 5
- (a) ~~the person who inherited the resale right under the will or on the intestacy of the artist, if they still hold that right at the time that the contract for the qualifying resale is entered into; or~~ 10
 - (b) ~~the person who holds the right at that time after 1 or more transfers of the right under **subsection (3)**.~~
- (a) the successor holds those rights; and
 - (b) the successor,—
 - (i) in the case of an individual, is— 15
 - (A) a New Zealand citizen; or
 - (B) domiciled or resident in New Zealand; or
 - (C) a citizen or subject of, or domiciled or resident in, a reciprocating country;
 - (ii) in the case of any other person, is incorporated, registered, or carrying on business in New Zealand or a reciprocating country. 20
- (3) ~~The person who inherited the resale rights, or any subsequent successor, A successor~~ may transfer the resale rights to another person, as personal property, by— 25
- (a) assignment; or
 - (b) testamentary disposition; or
 - (c) operation of law.
- (4) If 2 or more ~~persons~~ successors hold a resale right after the artist's death, each ~~person~~ successor holds the share of the right that they inherit or that is transferred to them. 30
- (5) In this section, **successor**, in relation to an artist's resale rights, means—
- (a) the person who inherited the resale rights under the will or on the intestacy of the artist; or
 - (b) the person who holds the resale rights after 1 or more transfers of the rights under **subsection (3)**. 35

15 Duration of resale right period

- (1) This section sets out the period during which a qualifying resale of an original visual artwork creates a resale right.
- (2) The period begins when the artwork is created and ends at the close of the last day (the **expiry date**) of the following period: 5
 - (a) if the artwork is created by 1 artist, the period of 50 years after the end of the calendar year in which the artist dies:
 - (b) if the artwork is created by the collaboration of 2 or more artists, the period of 50 years after the end of the calendar year in which the last of those artists dies. 10

*Resale royalty payments***16 Amount of royalty**

The resale royalty payable in respect of a qualifying resale is,—

- (a) for a professional resale, 5% of the resale value; and
- (b) for a voluntary qualifying resale, the percentage of the resale value that the parties have agreed to. 15

17 Liability for payment of resale royalties to collection agency

- (1) The following persons are jointly and severally liable to pay a resale royalty to the collection agency:
 - (a) the seller; and 20
 - (b) either—
 - (i) the agent acting for the seller on the resale; or
 - (ii) if the seller does not have an agent, the agent acting for the buyer on the resale; or
 - (iii) if there are no agents, the buyer. 25
- (2) The liability arises on the completion of the qualifying resale.
- (3) The liability is discharged when the total amount of the resale royalty is paid to the collection agency.
- (3A) Payment of the resale royalty must be made to the collection agency within the time frame, and otherwise in the manner, specified by the regulations. 30
- (4) Any agreement to share or repay the resale royalty, other than as provided for in this Act, is void.

18 Liability for payment of resale royalties to right holders

- (1) The collection agency is liable to pay, to the right holder, each resale royalty it receives under **section 17**. 35

- (2) The liability arises when the total amount of the resale royalty is paid to the collection agency.
- (3) The liability is discharged if the total amount, less the percentage that the collection agency is entitled to retain (*see* **section 20**), is paid ~~to the right holder.~~ 5
- (a) to the right holder, if the right holder is New Zealand-based:
- (b) to the equivalent of the collection agency in the relevant reciprocating country, in all other cases.
- (4) If there are 2 or more right holders (*see* **section 12 or 14**), the liability to each right holder is discharged if that right holder or the equivalent to the collection agency in the relevant reciprocating country (whichever applies) is paid the share of the amount to be paid under **subsection (3)** that corresponds to the person's share of the right. 10
- (5) Payments to right holders must be made in accordance with the regulations.
- (6) In this section, a right holder is **New Zealand-based** if,— 15
- (a) in the case of an individual, they are—
- (i) a New Zealand citizen; or
- (ii) domiciled or resident in New Zealand;
- (b) in the case of any other person, they are incorporated, registered, or carrying on business in New Zealand. 20
- 19 Right holder may decline resale royalty payment**
- (1) A right holder may, by notice in writing to the collection agency, decline to receive payment of all or part of a resale royalty.
- (2) If a right holder declines to receive payment of any amount of a resale royalty, the collection agency must use or manage the amount in the manner specified by the regulations. 25

Other matters relating to resale royalties

- 20 Collection agency entitled to retain percentage of resale royalties**
- (1) For the purpose of funding its activities under this Act, the collection agency is entitled to retain a specified percentage of the resale royalties it collects. 30
- (2) The **specified percentage** is the percentage specified by ~~or under~~ the regulations.
- (3) ~~The regulations may—~~
- (a) ~~specify the percentage; or~~
- (b) ~~authorise the Minister, by notice in the *Gazette*, to specify the percentage in accordance with the process specified in the regulations.~~ 35

(4) ~~A notice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~

(3) The Minister must consult with the collection agency before recommending that regulations be made to specify the percentage for the purpose of **subsection (2)**. 5

21 Requirement to provide collection agency with information about qualifying resales

(1) This section applies to the following parties to a qualifying resale of an original visual artwork:

- (a) in the case of a professional resale,— 10
 - (i) each art market professional that is a party to the resale; or
 - (ii) if none of the parties to the resale is an art market professional, each art gallery or museum referred to in **section 9(2)(a)** that is a party to the resale:
- (b) in the case of a voluntary qualifying resale, the person that the parties to the resale agreed would be responsible for providing information to the collection agency. 15

(2) Each party must ensure that the following information about the resale is provided to the collection agency:

- (a) the name of the artwork, if known: 20
- (b) a brief description of the artwork:
- (c) the resale value:
- (d) the name of the artist, if known:
- (e) the name and contact details of the persons liable under **section 17** to pay the resale royalty, if known: 25
- (f) any other information specified by the regulations.

(3) The information must be provided within the time frame, and otherwise in the manner, specified by the regulations.

Collection agency

22 Minister may appoint collection agency 30

(1) There must at all times be a person appointed by the Minister as the collection agency ~~appointed by the Minister~~.

(2) The Minister may, by notice in the *Gazette* ~~and in accordance with the process specified by or under the regulations~~, appoint a person as the collection agency for the purposes of this Act. 35

- (3) Before appointing a person as the collection agency, the Minister must ~~be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions of the collection agency under this Act.~~
 (a) be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions of the collection agency under this Act; and 5
 (b) consider, or be satisfied of, any other matters specified in the regulations.
- (4) The collection agency holds office for the term specified in the notice.
- (5) A person is not to be regarded as being employed in the service of the Crown for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956 solely because of their appointment as the collection agency. 10
- (6) ~~The regulations may—~~
 (a) ~~specify the process for appointing a collection agency; or~~
 (b) ~~authorise the Minister, by notice in the *Gazette* and subject to any criteria or conditions specified in the regulations, to specify a process for appointing a collection agency.~~ 15
- (6) The collection agency is subject to the Ombudsmen Act 1975, the Official Information Act 1982, and the Public Records Act 2005 in respect of functions that it performs under this Act. 20
- 23 Function, duties, and operation of collection agency**
- (1) The function of the collection agency is to collect and distribute resale royalties to right holders.
- (2) The collection agency must—
 (a) comply with the rules of operation set out in the regulations; and 25
 (b) operate in a way that is transparent, accountable, and respectful; and
 (c) act in the best interests of right holders; and
 (d) in carrying out its function and duties,—
 (i) acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists; and 30
 (ii) be inclusive of, and recognise the different needs of, all peoples in New Zealand.
- (3) The regulations may specify the rules of operation of the collection agency, including rules in relation to any or all of the following matters:
 (a) how resale royalties are to be collected, held, and distributed: 35
 (b) how resale royalties that are not distributed are to be used or managed (for example, where right holders decline payment or cannot be found):

- (c) how right holders are to be represented in the management of the collection agency:
 - (d) how financial records are to be disclosed:
 - (e) how information relating to resale rights is to be collected and retained:
 - (f) what records must be kept and how records held by the collection agency ~~are to be kept and made available:~~ 5
 - (g) any other matter that relates to the role of the collection agency under this Act.
- (4) The regulations may provide for the collection agency to establish and maintain a register of right holders. 10

24 Chief executive must monitor performance of collection agency

The chief executive of the Ministry must monitor and report on the performance of the collection agency in the manner required by the regulations.

Enforcement and remedies

25 Enforcement 15

- (1) The collection agency may apply to a court of competent jurisdiction for orders under **section 26** if—
- (a) information is not provided in accordance with **section 21**:
 - (b) a person liable under **section 17** to make resale royalty payments fails to do so: 20
 - (c) any other requirement under this Act is not complied with in accordance with this Act.
- (2) This section does not limit any proceedings that may otherwise be taken by the collection agency, a right holder, or any other person.

26 Remedies 25

- (1) In proceedings brought under **section 25**, the court may grant relief by making orders that—
- (a) the necessary information be provided, as required by **section 21**:
 - (b) payment be made of any resale royalties owing under **section 17**:
 - (c) are appropriate for an infringement of a property right. 30
- (2) Nothing in this section affects any other power of the court.

Secondary legislation and other instruments

27 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes: 35

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- (a) providing for anything this Act says may or must be provided for by regulations:
- (aa) providing for the establishment and operation of a cultural fund to be used for the purpose of supporting the career sustainability of visual artists: 5
- (ab) requiring the collection agency to do the following with any amount of resale royalty that is declined under **section 19** or not paid to the right holder because they cannot be found:
- (i) transfer the amount to the cultural fund; or
- (ii) return the amount to the person who paid the resale royalty under **section 17**; or 10
- (iii) if the person who paid the resale royalty cannot be found, use the amount to fund the activities of the collection agency under this Act:
- (b) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 15
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (3) ~~If regulations authorise the Minister to do anything specified in **section 20(3)(b) or 22(6)(b)** by notice,—~~ 20
- (a) ~~the notice is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and~~
- (b) ~~the regulations must contain a statement to that effect.~~
- 28 Reciprocating countries**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify a reciprocating country for the purposes of this Act. 25
- (2) The reciprocating country must be an entity (whether a State, part of a State, a territory for whose international relations a State is responsible, a political union, an international organisation, or any other entity).
- (3) The Minister must, before recommending that an order be made, be satisfied that the law of the reciprocating country does or will provide for a reciprocal resale right. 30
- (4) An Order in Council made under this section ~~must be—~~ is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (a) ~~published on an Internet site maintained by or on behalf of the Ministry; and~~ 35
- (b) ~~notified in the *Gazette*.~~

Schedule 1

Transitional, savings, and related provisions

s 5

Part 1

Provisions relating to this Act as enacted

5

1 Interpretation

In this Part, **commencement date** means the date on which this Act comes into force.

2 Who holds resale rights of artists deceased before commencement date

- (1) This clause applies to the resale rights of an artist who dies before the commencement date. 10

- (2) **Section 14** applies as if the person who holds the resale rights on the commencement date were the person who would have been beneficially entitled to them immediately before the commencement date if all of the following were true: 15

- (a) the right to hold the artist's resale rights (the **property right**) existed at the time of the artist's death:
- (b) the artist died intestate:
- (c) the property right passed to 1 or more successors in accordance with the intestacy legislation as in force at the time of the artist's death: 20
- (d) if a successor (**S**) dies before the commencement date,—
 - (i) they died intestate; and
 - (ii) their share of the property right passed to 1 or more other successors under the intestacy legislation as in force at the time of S's death. 25

- (3) The person who holds the resale rights in accordance with this clause must be treated as the successor for the purposes of **section 14(3)** ~~as the person who inherited the rights from the artist, and **section 14(2)(a)** does not apply.~~

- (4) In this ~~section~~ clause, **intestacy legislation** means—

- (a) the provisions about intestacy in the Administration Act 1969 (*see in particular* Part 3 of that Act); or 30
- (b) any repealed or amended legislation about intestacy that the Administration Act 1969 replaces or corresponds to, with or without modification.

3 Resales agreed to before commencement date are not qualifying resales

The resale of an original visual artwork is not a qualifying resale if the contract for the resale was entered into before the commencement date, even if 1 or 35

more of the terms of the contract are satisfied on or after the commencement date.

4 Minister does not need to consult with collection agency before setting specified percentage for first time

Section 20(3) does not apply to the making of regulations that specify the percentage for the purpose of **section 20(2)** for the first time. 5

Legislative history

28 March 2023

Introduction (Bill 236–1), first reading and referral to Social Services and Community Committee