

Explanatory Statement

Resale Royalty Right for Visual Artists Act 2009

Resale Royalty Right for Visual Artists Regulations 2021

Issued by the authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Purpose

The purpose of the *Resale Royalty Right for Visual Artists Regulations 2021* is to repeal and remake the current *Resale Royalty Right for Visual Artists Regulations 2011*, with some technical changes to reflect current drafting practice.

Specifically, the Regulations will determine:

- the excluded class of transfer, which sets out that commercial resales of artworks for a sale price of less than \$1000 are not required to be reported to the collecting society;
- that it is the Minister who determines the format of the notice of a commercial sale to the collecting society; and
- the detail, considered to be sufficient, in the notice of commercial sale.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority

The *Resale Royalty Right for Visual Artists Act 2009* (the Act) establishes the resale royalty scheme, which entitles visual artists with the right to receive a 5 per cent royalty payment each time one of their works is resold on the secondary art market for \$1000 or more. The Act also provides that the Minister may appoint a collecting society to administer the resale royalty scheme.

Section 53 of the Act provides that the Governor-General may make regulations prescribing matters prescribed or permitted to be prescribed by the Act or necessary or convenient to be prescribed for the carrying out or giving effect to the Act. The notes on the provisions of the Regulations are set out in Attachment A.

Consultation

Consultation was undertaken with Copyright Agency Limited (CAL), the collecting society appointed under section 35 of the Act, to determine if the desired policy and operational outcomes have been reached. Copyright Agency Limited has confirmed that the Regulations remain practical and administratively workable and are fit for purpose.

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) was consulted concerning any requirement to prepare a Regulatory Impact Statement (RIS) for the Regulations (OBPR reference ID 43459). OBPR advised that as the instrument is expected to be remade without change, the Department can certify that the instrument is operating ‘effectively and efficiently’, and that a RIS is not required. The certification letter is at [Attachment B](#).

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment C](#).

Notes on the Resale Royalty Right for Visual Artists Regulations 2021

Part 1—Preliminary

Section 1 Name

This section provides that the name of the Regulations is the *Resale Royalty Right for Visual Artists Regulations 2021*.

Section 2 Commencement

This section provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Section 3 Authority

This section provides that the Regulations are made under the *Resale Royalty Right for Visual Artists Act 2009*.

Section 4 Definitions

This regulation provides that ‘Act’ means the ‘*Resale Royalty Rights for Visual Artists Act 2009*’.

Section 5 Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 Excluded class of transfer

Paragraph 8(1)(c) of the Act provides that there is a ‘commercial resale’ of an artwork if the transfer is not otherwise one of an excluded class. Paragraph 8(2) of the Act provides that the transfer of ownership of an artwork from one individual to another in circumstances that do not involve an art market professional acting in that capacity, is an excluded class of transfer.

Section 6 of the Regulations provides that an excluded class of transfer is a transfer of ownership of an artwork from one person to another for monetary consideration of less than \$1000 and to which subsection 8(2) of the Act does not apply.

The effect of this regulation is that the sale of an artwork for less than \$1000 (on which no royalties are payable) will not be considered a ‘commercial resale’ for the purposes of the Act. Consequently, a person who sells an artwork for less than \$1000 will not be required, under section 28 of the Act, to report the sale to the collecting society or comply with any other provisions in the Act in relation to commercial resales. This regulation has significantly reduced reporting requirements for sellers.

Section 7 Format of notice of commercial resale

Section 28 of the Act provides the circumstances under which a person must give the collecting society a notice of the commercial resale of an artwork and the format the notice must take.

Section 7 of the Regulation provides that for Section 28 of the Act, the Minister may, by legislative instrument, determine a format of notice of commercial resale. The format for the notice of commercial resale provides clear and precise guidance for sellers in reporting on commercial resales and enables the collecting society to manage resale notices and royalty payments more efficiently.

Section 8 Notice of commercial resale

Paragraph 28(2)(c) of the Act provides that the notice provided to the collecting society must include sufficient detail to allow the collecting society to determine whether resale royalty is payable on the commercial sale and if so, the amount payable and who is liable to pay.

Subregulation 8(1) of the Regulations provides that for paragraph 28(2)(c) of the Act the following information is taken to be ‘sufficient detail’ in a notice of commercial resale:

- (a) the date of resale;
- (b) the GST inclusive sale price;
- (c) whether the seller acquired the artwork on or after the commencement date of the resale royalty right arrangements to which the Act relates (that is, 9 June 2010);
- (d) the medium of the artwork or a description of the artwork;
- (e) the artist's name (if known)
- (ea) if the artist's name is not known – that fact;
- (f) the country of which the artist is a citizen or permanent resident (if known);
- (fa) if the country of which the artist is a citizen or permanent resident is not known – that fact;
- (g) whether the artist is alive (if known);
- (ga) if whether the artist is alive is not known – that fact;
- (h) if the artist has died – the year of the artist's death (if known);
- (ha) if the artist has died and the year of the artist's death is not known – that fact.

The purpose of subregulation 8(1) of the Regulations is to provide guidance on the type of information that should be submitted by a seller to the collecting society in order to satisfy the requirements of paragraph 28(2)(c) of the Act. Greater clarity for sellers in understanding reporting requirements improves operations for the collecting society and enables more efficient and effective delivery of royalties to artists.

Subregulation 8(2) provides that paragraph 8(1) does not prevent other combinations of information from being sufficient detail in a notice of commercial resale.

Schedule 1 - Repeals

Resale Royalty Right for Visual Artists Regulations 2011

Item 1 of Schedule 1 provides for the repeal of the *Resale Royalty Right for Visual Artists Regulations 2011*.



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
Email: helpdesk-OBPR@pmc.gov.au

Dear Mr Lange

Resale Royalty Right for Visual Artists Regulations 2011

I am writing to the Office of Best Practice Regulation (OBPR) regarding the *Resale Royalty Right for Visual Artists Regulations 2011*, which, as per the *Legislation Act 2003*, had been scheduled to sunset on 1 April 2022. However, it has been decided that the instrument is to be remade without significant amendment.

The Department of Infrastructure, Transport, Regional Development, and Communications certifies that the *Resale Royalty Right for Visual Artists Regulations 2011* is operating effectively and efficiently, and that therefore a Regulation Impact Statement is not required for this regulation to be remade.

The assessment that the Regulation is operating effectively and efficiently has been informed by consultation with Copyright Agency Ltd, which was appointed the collecting society and has been administering the scheme since 2010.

I also note that the regulatory burden to business, community organisations or individuals has been quantified using the Australian Government's *Regulatory Burden Measurement framework*. These are provided below.

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	nil	nil	nil	nil

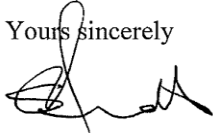
I acknowledge that OBPR will publish this letter for transparency purposes.

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If you have any queries about this advice, please contact Laurine Kelson, Director, Visual Arts and Design on 02 6271 1175, or laurine.kelson@arts.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Arnott', with a stylized flourish at the end.

Stephen Arnott
Acting Deputy Secretary
Creative Economy and the Arts
Department of Infrastructure, Transport, Regional Development and Communications

23 September 2021

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Resale Royalty Right for Visual Artists Regulations 2021

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Resale Royalty Right for Visual Artists Regulations 2021

The *Resale Royalty Right for Visual Artists Act 2009* (the Act) established the resale royalty scheme, which entitles visual artists with the right to receive a 5 per cent royalty payment each time one of their works is resold on the secondary art market for \$1000 or more.

The Regulations support the Act by clarifying and streamlining the operation of the resale royalty scheme through reporting obligations enabling more efficient and effective payment of royalties. Specifically, the Regulations will determine:

- the excluded class of transfer, which sets out that commercial resales of artworks for a sale price of less than \$1000 are not required to be reported to the collecting society;
- that it is the Minister who determines the format of the notice of a commercial sale to the collecting society; and
- the detail, considered to be sufficient, in the notice of commercial sale.

The purpose of the *Resale Royalty Right for Visual Artists Regulations 2021* would be to repeal the *Resale Royalty Right for Visual Artists Regulations 2011* and remake these Regulations as the *Resale Royalty Right for Visual Artists Regulations 2021*, with some changes to reflect current drafting practice. The *Resale Royalty Right for Visual Artists Regulations 2021* are considered fit-for-purpose.

Human rights implications

The Regulations engage the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (the ICCPR).

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with a person's privacy. The Regulations engage the right to privacy by requiring a notice of commercial resale to include information sufficient to identify an individual artist, whether they are alive or deceased, and the sale price of their work. Under the Act, the collecting society is required to collect royalties on behalf of resale royalty right holders, and to distribute royalties to the holders of those rights. Without provision for this information to be collected, the collecting society will not be properly able to fulfil this function. To the extent that the collection of

information is a limitation under Article 17, it is reasonable, necessary and proportionate and in pursuit of a legitimate objective, the successful operation of the scheme. Accordingly, to the extent that the Regulations engage the right to privacy, it is compatible with that right.

Conclusion

The *Resale Royalty Right for Visual Artists Regulations 2021* are compatible with human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.