

EXPLANATORY STATEMENT

Issued by the Minister for the Arts

Resale Royalty Right for Visual Artists Act 2009

Resale Royalty Right for Visual Artists Regulations 2021

Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination 2023

Purpose

The purpose of the *Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination 2023* (the Determination) is to repeal and remake the *Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination (No. 1) 2012* with some minor changes.

Legislative Authority

Regulation 7 of the *Resale Royalty Right for Visual Artists Regulations 2021* (the Regulations) provides that the Minister may, by legislative instrument, determine a format of notice of commercial resale for the purpose of section 28 of the *Resale Royalty Right for Visual Artists Act 2009* (the Act).

Consultation

Consultation has been undertaken on the Determination with Copyright Agency Limited, (the collecting society appointed under section 35 of the Act), to ensure that the Determination will fit within their current systems and reporting processes, and also if it would be suitable for international reciprocal arrangements as may be enlivened in the Regulations.

Formal public consultation has not been undertaken as it is considered that the Determination will have minimal impact on those persons giving notice of a commercial resale of an artwork.

Operation of the Determination

The Determination provides for both an interactive and format forms of the notice of commercial resale which must be given by a seller of an artwork under section 28 of the Act.

A notice of commercial resale must include sufficient detail to allow the collecting society to work out if a royalty is payable and, if so, how much and who is liable to pay the royalty (paragraph 28(2)(c) of the Act).

A format of notice of commercial resale will provide clear and precise guidance for sellers in reporting on commercial resales and enable the collecting society to manage resale notices and royalty payments efficiently. A person is not prevented

from giving notice of a commercial resale in a format other than the one that has been determined by the Minister.

The Determination commences on the day after it is registered.

Statement of Compatibility with Human Rights

Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination 2023

The statement of compatibility set out below has been prepared to meet the requirement under Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Under the *Resale Royalty Right for Visual Artists Act 2009* (the Act), a notice of commercial resale must include sufficient detail to allow the collecting society to work out if a royalty is payable and, if so, how much and who is liable to pay the royalty (paragraph 28(2)(c) of the Act).

Regulation 7 of the *Resale Royalty Right for Visual Artists Regulations 2021* provides that the Minister may, by legislative instrument, determine a format of notice of commercial resale for the purpose of section 28 of the Act). The *Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination 2023* (the Determination) is made in reliance of regulation 7 and determines the format of notice to be used and also repeals the former determination (presented as a legislative instrument) which is due to sunset on 1 April 2023.

Collection of Private Information

The Determination engages the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (the ICCPR), which prohibits arbitrary or unlawful interference with a person's privacy.

The Determination engages 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. In addition, the collecting society is required to protect and handle personal information in accordance with its obligations under the Australian Privacy Principles (APPs) contained in the *Privacy Act 1988* (Cth). It is also subject to the Act, which contains several offences relating to the unauthorised information use of information acquired in the course of performing functions or exercising powers under the Act.

Accordingly, to the extent that the Regulations engage the right to privacy, it is compatible with that right.

Summary

The Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights*

(Parliamentary Scrutiny) Act 2011. To the extent that it may limit a human right, that limitation is reasonable, necessary and proportionate.

Attachment A

Notes to the *Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination 2023*

Section 1 – Name

This section provides for the instrument to be cited as the *Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination* (the Determination).

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered.

Section 3 Authority

This section identifies the provision that authorises the making of the Determination, namely Regulation 7 of the *Resale Royalty Right for Visual Artists Regulations 2021*.

Section 4 Definitions

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

Section 5 Schedule 3

This section provides that each instrument that is specified in Schedule 3 is amended or repealed as set out in the applicable item in that Schedule, and any other item in that Schedule has effect according to its terms.

Section 6 Formats of Notice of commercial resale

Subsection 6(1) provides for two formats of notice of commercial resale (as covered by Schedules 1 and 2). The formats are largely similar to the formats set out in the 2012 Determination with some minor changes.

Schedule 1

Schedule 1 sets out an interactive web format of the notice and this is to be provided at the internet address: www.resaleroyalty.org.au. This is the website managed by Copyright Agency Limited.

Schedule 2

Schedule 2 sets out an excel spreadsheet format of the notice and this is to be provided at the internet address: www.resaleroyalty.org.au.

Schedule 3

Schedule 3 lists, and repeals, the *Resale Royalty Right for Visual Artists (Format of Notice of Commercial Resale) Determination (No. 1) 2012*.