

Explanatory Statement

Issued by the Authority of the Minister for the Arts

Resale Royalty Right for Visual Artists Act 2009

Resale Royalty Right for Visual Artists Regulations Amendment (Reciprocating Countries) Regulations 2024

Authority

Section 53 of the *Resale Royalty Right for Visual Artists Act 2009* (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.

Purpose

The purpose of the instrument is to amend the *Resale Royalty Right for Visual Artists Regulations 2021* to prescribe eligible countries to enable international reciprocal arrangements for the purposes of paragraph 14(1)(c) of the Act.

The Act allows for the establishment of reciprocal arrangements through section 14, Residency Test, which allows for countries that have implemented Article 14^{ter} of the Berne Convention for the protection of Literary and Artistic Works (Berne Convention) to be prescribed as a reciprocating country.

Section 14 of the Act sets out the residency requirements that a potential right holder must meet in order to be eligible to hold the resale royalty right at the time of any commercial resale (as set out in section 12). An individual satisfies the residency test at a particular time if that person, at that time, is an Australian citizen (paragraph 14(1)(a)), a permanent resident of Australia (paragraph 14(1)(b)) or a national or citizen of a country prescribed as a reciprocating country in regulations ((paragraph 14(1)(c)).

Background

The resale royalty right, being the right to allow the right to an interest in any sale of the work subsequent to the first transfer by the author of the work, is recognised in the Berne Convention, a multilateral copyright treaty administered by the World Intellectual Property Organization (WIPO). Australia acceded to the Berne Convention (as at Paris, 1971) on 28 November 1977, with entry into force on 1 March 1978.

The Copyright Agency Ltd (CAL), the collecting society currently appointed under section 35 of the *Resale Royalty Right for Visual Artist Regulations 2021* is required to establish reciprocal relationships with collecting organisations in overseas jurisdictions that operate a resale royalty scheme for visual artists. This will enable the reciprocal collection and payment of royalties to artists.

The international reciprocal arrangements align to the Government's commitments for the Resale Royalty Scheme under the National Cultural Policy *Revive*.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance.

The Regulations commence on 31 March 2024.

Details of the instrument are set out in [Attachment A](#).

Consultation

On behalf of the Minister, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts consulted with CAL, the collecting society appointed under section 35 of the Act, to identify minor changes to the reporting regime, collection and payment of royalties.

The Office of Impact Analysis was consulted and the preparation of an Impact Analysis was not required (OIA23-06090).

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 B](#).

Details of the *Resale Royalty Right for Visual Artists Amendment (Reciprocating Countries) Regulations 2024*

Section 1 – Name

This section provides that the name of the Regulations is *Resale Royalty Right for Visual Artists Amendment (Reciprocating Countries) Regulations 2024*.

Section 2 – Commencement

This section provides for the whole of the Regulations to commence on 31 March 2024.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

This schedule sets out amendments to the *Resale Royalty Right for Visual Artists Regulations 2021*.

Item [1] – After section 6

Item 1 of Schedule 1 inserts new section 6A, titled “Residency test–individuals”. This new section specifies, for the purposes of paragraph 14(1)(c) of the Act, the following countries are prescribed as reciprocating countries: Austria; Belgium; Czech Republic; Denmark; Finland; France; Germany; Hungary; Ireland; Italy; Latvia; Netherlands; Norway; Portugal; Spain; Sweden; and the United Kingdom.

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 Amendment (Reciprocating Countries) Regulations 2024

Overview

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 \$1,000 or more. The Act allows for the establishment of Reciprocal arrangements through paragraph 14(1)(c) (residency test), which allows for countries that have implemented Article 14^{ter} of the Berne Convention for the protection of Literary and Artistic Works (Berne Convention) to be prescribed as a reciprocating country and as a national or citizen of a country prescribed as a reciprocating country will satisfy the residency test.

The purpose of the *Resale Royalty Right for Visual Artists Amendment (Reciprocating Countries) Regulations 2024* is to amend the Regulations to allow for the prescribing of eligible countries to enable international reciprocal arrangements.

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 holder 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 this 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 Amendment (Reciprocating Countries) Regulations 2024* are compatible with human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.