

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 2025

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 nine additional eligible countries into international reciprocal arrangements for the purposes of paragraph 14(1)(c) of the Act.

The Act allows for the continued establishment of reciprocal arrangements through section 14, Residency Test, which allows for countries that have implemented Article 14ter of the *Berne Convention for the protection of Literary and Artistic Works* (Berne Convention) to be prescribed as a reciprocating country. The countries to be included are Estonia, Greece, Lithuania, Mexico, New Zealand, Poland, Romania, Slovakia and Uruguay.

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

Internationally, the resale royalty right (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 for the Protection of Literary and Artistic Works* (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 Limited (CAL), the collecting society currently appointed under section 35 of the *Resale Royalty Right for Visual Artist Regulations 2024* (the current Regulations) is required to establish additional reciprocal relationships with collecting organisations in overseas jurisdictions that operate a resale royalty scheme for visual artists. This enables the reciprocal collection and payment of cumulating royalties to artists.

The international reciprocal arrangements align to the Government’s commitments for the Resale Royalty Scheme under the National Cultural Policy, *Revive*. *Revive* is a five year plan to renew and revive Australia’s arts, entertainment and cultural sector and was released on 30 January 2023. It aims to deliver new momentum so that Australia’s creative workers, organisations and audiences continue to thrive and grow.

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

The Regulations commence on 31 March 2025.

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 Copyright Agency Limited (CAL), the collecting society appointed under section 35 of the Act, to identify minor changes to the reporting regime, collection and payment of royalties. CAL was supportive of these further countries being included. Other relevant agencies within the Commonwealth were consulted.

The Office of Impact Analysis was consulted in respect of the instrument and they advised that an impact analysis was not required (OIA24-07982).

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 2025*

Section 1 – Name

This section provides that the name of the Regulations is *Resale Royalty Right for Visual Artists Amendment (Reciprocating Countries) Regulations 2025*.

Section 2 – Commencement

This section provides for the Regulations to commence on 31 March 2025.

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 to the Regulations, and one instrument is specified for amendment.

Schedule 1 – Amendments

Schedule 1 sets out amendments to the *Resale Royalty Right for Visual Artists Regulations 2021*.

For the purposes of paragraph 14(1)(c) of the Act, Items 1-7 of Schedule 1 make amendments to section 6A of the Regulations, to specify nine new reciprocating countries. Item 8 makes a minor technical amendment.

Item [1] – After paragraph 6A(d)

Item 1 of Schedule 1 to the proposed Regulations, would insert a new paragraph (da), specifying Estonia.

Item [2] – After paragraph 6A(g)

Item 2 of Schedule 1 to the proposed Regulations, would insert a new paragraph (ga), specifying Greece.

Item [3] – After paragraph 6A(k)

Item 3 of Schedule 1 to the proposed Regulations, would insert two new paragraphs (ka) and (kb) to the listing, specifying Lithuania and Mexico respectively.

Item [4] – After paragraph 6A(l)

Item 4 of Schedule 1 to the proposed Regulations, would insert a new paragraph (la) the listing at section 6A, specifying New Zealand.

Item [5] – After paragraph 6A(m)

Item 5 inserts a new paragraph (ma), specifying Poland.

Item [6] – After paragraph 6A(n)

Item 6 inserts two new paragraphs (na) and (nb), specifying Romania and Slovakia respectively.

Item [7] – At the end of section 6A

Item 7 inserts a new paragraph (r) to the listing at section 6A, specifying Uruguay.

Item [8] – Subsection 8(2)

Existing section 8 of the *Resale Royalty Right for Visual Artists Regulations 2021* sets out the required notice provided to the collecting society and the level sufficient detail to allow the collecting society to determine whether resale royalty is payable on the commercial sale.

Item 8 makes a technical amendment to correct an incorrect cross reference at existing subsection 8(2) (as it is a subsection not a subregulation).

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 2025

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 five 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 2025* is to amend the Regulations to prescribe nine additional eligible countries to enable international reciprocal arrangements with those countries.

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 2025* are compatible with human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.