



# Australian Government

## Department of the Environment, Water, Heritage and the Arts

Mr Peter Keele  
Committee Secretary  
Standing Committee on Climate Change, Water, Environment and the Arts  
PO Box 6021  
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Parliament House  
CANBERRA ACT 2600

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Secretary:	<i>PK</i>

Dear Committee Secretary

Thank you for the opportunity to make a submission to the Committee's inquiry into the Resale Royalty Right for Visual Artists Bill 2008 ('the Bill').

The *Resale Royalty Right for Visual Artists Bill 2008* is intended to give effect to the Australian Government's election policy commitment to introduce a resale royalty right for visual artists. A resale royalty, also called a *droit de suite*, entitles an artist to receive a royalty payment from subsequent sales of his or her artwork. The Bill is intended to create a resale royalty right in Australia and establish a statutory scheme to enforce the right and collect and distribute royalties. The 2008-09 Federal Budget included funding of \$1.5 million over three years to implement a resale royalty scheme.

The Bill is intended to give effect to clause 14*ter* of the *Berne Convention for the Protection of Literary and Artistic Works* ('the Berne Convention'), an optional clause stating that artists, with respect to their original works of art, shall "enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work." Australia acceded to the Berne Convention (as at Paris, 1971) on 28 November 1977, with entry into force on 1 March 1978. To date, 54 countries out of 164 contracting parties to the Berne Convention have introduced a resale royalty right, including the United Kingdom and other European Union member states.

The Bill covers the draft framework and detailed parameters agreed by Government. While the Department of the Environment, Water, Heritage and the Arts ('the Department') had primary responsibility for developing recommendations to implement the Government's commitment, the Department was assisted by a cross-Government working group established in February 2008 which considered detailed aspects of the scheme. This working group was chaired by the Department of the Environment, Water, Heritage and the Arts, and included the following Departments: Department of the Prime Minister and Cabinet, the Treasury, Department of Finance and Deregulation, Attorney-General's Department and Department of Families, Housing, Community Services and Indigenous Affairs.



### ***Outline of the Bill***

The resale royalty right created in the Bill is intended to allow visual artists to benefit from the commercialisation of their work in the secondary art market. Visual artists derive their main source of income from the first sale of original artworks and do not currently have the same range of opportunities as other creators, such as authors and composers, to earn money through exercising the copyright in their work through reproductions, public performances or broadcasts. Visual artists and their representatives have also advocated for this right, emphasising its important symbolic significance, above and beyond the economic value, as a statement of the esteem in which Australia holds its visual arts culture.

Introducing the right is also anticipated to significantly increase the transparency of the art market. The Bill requires sellers to notify the collecting agency each time a work is resold on the secondary art market. This means the collecting agency will keep detailed records on all relevant sales occurring, and will need to publish key data in its annual report which will be tabled in the Parliament.

The Bill is intended to provide for a five per cent royalty on resales of original artworks when sold for \$1,000 or more on the secondary art market. Under the Bill the royalty would only apply to resales that involve an art market intermediary. The right will apply to many types of artworks, but will exclude buildings, plans or models for buildings, circuit layouts, and manuscripts. The Bill provides that the right would be absolutely inalienable and unable to be waived. This will protect artists from potential exploitation. The duration of the right will be the same as the term of copyright in artistic works, i.e. for the life of the artist and for 70 years after the death of the artist so that artists can pass on the right to their families and heirs. This is to provide for the fact that artists may often only achieve recognition and success late in life.

The right will be able to be shared among artists who collaborate in creating an artwork. There are provisions to assist in identifying the artist of a particular artwork. The scheme will apply to Australian citizens or permanent residents, with foreign nationals covered on the basis of reciprocity under the Berne Convention.

The Bill establishes joint and several liability of the seller, the buyer and any agents involved in a qualifying resale to pay the resale royalty. The Bill sets up mechanisms for the royalty's collection through the collecting society, including both rights to seek and obligations to provide information. The seller or their agent will be required to notify the collecting organisation of commercial resales of artworks. The Bill also sets out specifications to apply to any collecting society under the scheme. The Minister will appoint a single collecting society following a competitive tender process.

The scheme to collect royalties is intended to commence on 1 July 2009 and it will be prospective, applying only to resales of original artworks acquired after the legislation takes effect. This is to protect existing property rights and to allow businesses in the Australian art market to adjust to this change in their operating environment.

There are also provisions relating to civil and criminal penalties for failing to comply with certain aspects of the scheme. This will ensure the scheme can be enforced

appropriately and will strongly encourage sellers and art market professionals to comply with the scheme.

While detailed information about the specific clauses of the Bill has been provided in the Explanatory Memorandum, I would like to take this opportunity to provide you with some further information in regards to certain key parameters of the scheme, as set out at Attachment A.

### ***Consultation and Other Input Informing the Bill's Design***

In developing a resale royalty scheme tailored to the particular characteristics of the Australian art market, the Government carefully considered various options, taking into account the views of a wide range of stakeholders across the visual arts and art market sectors, research of overseas schemes and analysis of recent Australian art market data. The Government examined a number of successfully functioning schemes in the United Kingdom and other European countries in developing a model that would be suited to the Australian art market.

Relevant areas of the Attorney-General's Department, including the Office of International Law, Copyright Law Branch, Administrative Law and Civil Procedure Branch, Criminal Law Branch, Office of Legal Services Coordination, Federal Courts Branch, were all consulted in relation to the draft Bill. The Department also sought and received formal legal advice in the context of developing the scheme. The Treasury and the Australian Taxation Office have also been consulted further in relation to the definition of the sale price, implications in relation to the Goods and Services Tax, and tax treatment of the royalty for individuals and the collecting society.

The Department engaged Access Economics to produce detailed economic modelling for resale royalty to assist in ensuring the scheme is appropriately tailored for the Australian arts market. The report was produced in April 2008 and was based exclusively on data from auction house sales. Viscopy also commissioned Access Economics to undertake economic modelling in relation to a resale royalty scheme, with a report of the findings published in 2004. In 2004 Access Economics estimated auction sales make up about half of the total secondary art market. However, no accurate data currently exists on the other half of the market, resales through dealers or galleries. While total royalties collected therefore would be double those estimated for auction sales, it is not possible to estimate the distribution of the royalties collected from dealer and gallery resales. The Department provided a copy of the 2008 Access Economics Report to Mr Peter Keele, the Committee Secretary, on 12 January 2009. The 2004 Access Economics Report is available on the Department's website at [www.arts.gov.au/publications/inquiries\\_and\\_reviews/resale\\_royalty\\_discussion\\_paper](http://www.arts.gov.au/publications/inquiries_and_reviews/resale_royalty_discussion_paper).

Both the current and the previous Government have consulted extensively with the Australian community over several years in relation to a resale royalty right, including through the release of a discussion paper in July 2004. This paper was a neutral canvassing of the issues and practical considerations surrounding the possible introduction of a resale royalty arrangement in Australia, with the aim of providing an avenue for broad community consultation on the issue. The discussion paper outlined three models for the possible implementation of an Australian resale royalty scheme, with a further option not to implement a resale royalty scheme but to develop targeted

measures to assist Indigenous artists. Fifty-two submissions were received in response, including from art market businesses, artists, peak arts and Indigenous organisations, and national collecting institutions.

With specific regard to implementing the 2007 election commitment, 27 key stakeholders were invited to make written submissions in response to an options paper circulated by the Department. The stakeholders included relevant state and territory government departments, Indigenous arts peak organisations, intellectual property right bodies, national collecting institutions, art auction houses, commercial gallery representatives and artist representative bodies. In addition, representatives of the Department met with a range of arts and art market sector bodies throughout April and May 2008.

I trust this information will be of assistance to the Committee. Please contact me on (02) 6275 9597 or Lynn Bean, First Assistant Secretary, Arts, on (02) 6275 9594 if you have any questions about the information provided or if we can be of further assistance to the Committee.

Yours sincerely

Mark Tucker  
Deputy Secretary  
Department of the Environment, Water, Heritage and the Arts  
January 2008

## **Rationale for Bill's Suggested Parameters**

### ***Form of legislation***

The Bill seeks to introduce a resale royalty right ('the right') through stand-alone legislation. The intent is to make the legislated requirements of the resale royalty scheme more easily accessible to affected stakeholders in the arts sector, allowing artists to understand their rights while also helping art market professionals fully understand their obligations. Accessibility would be of considerable benefit in ensuring an effective and efficient scheme. This also allowed the Minister for the Arts to have primary responsibility for the development and subsequent introduction of the relevant legislation rather than the Attorney-General, which is appropriate given the scheme's principal concern with arts policy issues.

The Government decided upon stand-alone legislation in preference to implementing the right through amendment to the *Copyright Act 1968* ('the Copyright Act'). While a resale royalty right is related to copyright, separate implementing legislation will help avoid the confusion of employing terms, such as 'artistic work', which could have significantly different meanings under resale than in copyright.

### ***Definition of work of art***

Any definition of an artwork is problematic and open to debate. The definition adopted in the Bill was developed to account for the divergent views expressed in stakeholder consultations, using as a starting point the definition outlined in the Directive 2001/84/EC of the European Parliament and Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art ('the European Directive').

The intent of the Bill's definition of an artwork is amplified and clarified in the explanatory memorandum. It is intended to capture the types of artworks typically sold through the secondary art market and be flexible enough to capture new forms of visual expression as they may gain popularity and enter the secondary art market. The definition also includes provision for limited edition artist authorised multiple originals, such as prints and sculptures, as these can often fetch high prices on the secondary market.

It may be useful to note that the definition of a commercial resale and the threshold included in the Bill would further act to determine what works would be captured by the scheme.

Although there is provision in the Berne Convention to include manuscripts or architectural designs and models, the EU Directive does not include these items. It was considered that writers and composers are already able to derive significant economic benefit from reproduction of their work through copyright. The Bill also excludes architecture, including buildings, drawings, plans and models, as is the case in the European Union, as it was considered that architects are otherwise able to derive significant economic benefits from their work.

### ***Definition of resale***

It was considered that a clear definition of what constitutes a resale for the purposes of the royalty is important to ensure the effectiveness of the scheme and the efficiency of its administration.

The Bill's definition of resale includes all resales involving art market professionals, public institutions or organisations. This is based on the definition adopted in the EU Directive. While the EU Directive has a specific exemption for sales between private individuals and public institutions, it was considered that such an exemption should not be included in the Bill as it would only selectively recognise artists' rights and would appear to unfairly disadvantage commercial enterprises.

It was considered that including private exchanges between individuals would be extremely difficult to monitor and enforce. It was also considered that the administrative costs of attempting blanket coverage would be prohibitive and would almost certainly outweigh the financial benefits returned to artists.

The Bill captures all resales regardless of whether the work is sold at a profit or loss. This is also the case under the EU Directive. It was considered that the administration of a model which only captured sales on which a capital gain was made is likely to be higher and much more complicated than the proposed model, as it would rely upon the owner disclosing the original price of the artwork to the dealer or auction house upon the sale of the artwork, which would require validation and leave the scheme open to possible fraudulent claims. This in turn would increase the administrative burden and compliance costs for art market intermediaries. The difficulty of administration of a capital gains model increases further when value-adding expenses such as restoration and framing are taken into account in determining the level of profit made through resales. The administrative difficulty of a capital gains model particularly increases in regards to the Indigenous art market, in which primary transactions may often occur in exchange for goods or services instead of money, or for which receipts are often not made.

The Bill captures all resales subsequent to the first transfer of ownership, regardless of whether the first transfer was made by sale, gift or any other means. This is consistent with the United Kingdom's legislation, *The Artist's Resale Right Regulations 2006*. It was considered this provision was particularly important to protect the rights of Indigenous or emerging artists, who may frequently exchange their works of art for services or goods, rather than money.

### ***Threshold***

The Bill sets a sale price threshold of \$1000 below which no royalty will be payable. This figure represents a compromise between the objective of ensuring as many artists as possible benefit from the scheme, the administrative efficiency of the scheme and the concerns of art market businesses over compliance costs. According to Access Economics modelling, a threshold set at this level would have resulted in the distribution of royalties to over 50 per cent of artists represented in the 2007 auction resale market or their heirs, whereas a higher threshold (\$2,000, for example) would have excluded more than 50 per cent of artists.

Access Economics modelling on the distribution of art sales by value also indicates the relatively high volume of low value sales in the Australian secondary art market (see graph below). Access Economics advised that setting a threshold at \$500 would exclude approximately 21% of sales, while the \$1000 threshold would exclude 33% of sales. However, the value of royalties collected would barely change –with the value of sales excluded rising from 0.6% to 2% by raising the threshold from \$500 to \$1000. This shows that raising the threshold to \$1000 would significantly reduce the administrative burden of making very small payments, while maintaining a high level of royalties returned to artists through the scheme.

By way of comparison, the threshold on the United Kingdom’s scheme is €1000 (AU\$1,931.27 as at 9 January 2009).

Were no threshold to be set, the costs for both the collecting organisation and art market businesses of collecting very low royalty amounts would outweigh the benefits returned to artists. Access Economics modelling on 2007 auction sales indicated that no threshold would lead to royalty payments as low as 10 cents. Modelling estimates the effect of setting the threshold at different levels, as shown in the following table.

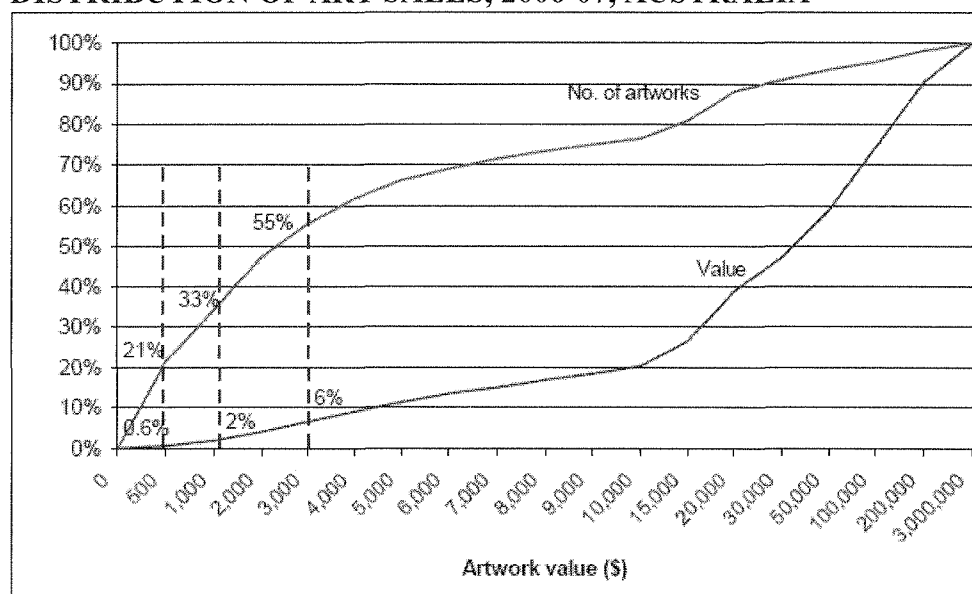
**EFFECT OF THRESHOLD LEVEL (2007 data)**

<i>Threshold</i>	<i>Royalties collected</i>	<i>Royalties to Indigenous artists</i>	<i>No. of artists to benefit</i>	<i>No. of living artists</i>	<i>No. of Indigenous artists</i>	<i>Min. payment</i>
None	\$5,023,192	\$780,150	1,578	962	397	\$0.10
\$500	\$5,005,750	\$778,392	1,181	687	360	\$20.01
\$1,000	\$4,974,271	\$774,432	973	556	327	\$40.68
\$2,000	\$4,910,520	\$765,211	772	437	274	\$80.03
\$10,000	\$4,405,020	\$650,087	304	147	110	\$413.11

Source: Access Economics modelling

All results are based on a flat rate of 5 per cent, life +70 years duration, no royalty cap and administration costs of 20 per cent. All royalty values refer to royalties net of administration charge.

## DISTRIBUTION OF ART SALES, 2006-07, AUSTRALIA



Source: Access Economics based on AASD data

Note the unequal increments on the x-axis.

The definition of sale price in the Bill was adopted following consultation with the Treasury.

### *Prospective application*

The Bill is intended to provide for prospective application of the resale royalty right. This is intended to help protect the property rights of people who bought or otherwise acquired artworks before the scheme was introduced, thereby not knowing that a resale royalty would be payable when they resold them.

This decision was made following consideration of a variety of options.

### *Entitlement*

The Bill provides that royalties are to be paid directly only to artists who are Australian citizens or permanent residents, or their heirs. The Bill states that heirs must also satisfy a residency test connecting them to Australia in order to be eligible to hold the right. Once a resale royalty is adopted in Australia, under the Berne Convention reciprocal arrangements will come into force. Foreign artists will be entitled to claim the right with respect to a sale of an artistic work in Australia to the extent that the law in their country provides reciprocal rights to Australian artists. Similarly, artworks by Australian artists that are resold in overseas markets with resale royalty schemes will also attract a royalty payment.

In addition, the Bill provides that the right may only be held by an individual, a charity, a charitable institution or a community body. As described in the explanatory memorandum, this is intended to restrict the right from being passed on to commercial bodies that operate with the intention of generating profit.

### *Authorship*

There are provisions in the Bill to assist in identifying the artist who created an artwork. These provisions are intended to facilitate recognition of the resale royalty right.



Provision is also made in the Bill for works of joint authorship, meaning a work produced by the collaboration of two or more artists where the contribution of each is not separate from the contribution of the other artists. In such cases, the right will be held in equal shares or in such shares as the artists agree. The right is intended to be held by the artists as 'tenants in common' so that each artist has the right to pass on his or her share of the royalty to his or her heirs. Such arrangements are made for works of joint authorship in overseas resale royalty schemes. Provision for joint authorship is considered to be particularly important in relation to artworks created by Indigenous artists.

### ***Rate***

The Bill provides for the royalty be calculated at a five per cent flat rate of the sale price. This decision was based on a combination of stakeholder and cross-government consultation and economic modelling.

This is intended to maximise administrative simplicity and ease of understanding for artists and all participants in the art market. A flat rate scheme is also fully in accord with the establishment of the resale royalty right as an ongoing economic right that, like copyright, rewards the creators of successful works of art.

A flat rate will mean lower administration costs and will provide greater dividends to artists. A flat rate would also be easier for the market to implement. While the proportion of royalties distributed to the most successful artists (or their heirs) would be higher than under a cumulative sliding scale, a flat rate will best reward artists with high-value art and will increase the total value of royalties collected.

The alternative, a cumulative sliding scale, in which the royalty is the sum of the percentage amounts of consecutive portions of the sale price, could be used to reduce the impact on the market and to reduce the proportion of the royalties going to high-value resales. The European Directive adopts this approach. Such a model has the disadvantage of reducing the overall return to artists and increasing the scheme's complexity and administration costs. A cumulative sliding scale offers potential for distortion of the market around each bracket threshold point.

Modelling by Access Economics shows that the use of a cumulative sliding scale significantly reduces the total royalties collected and distributed when compared to a 5% flat rate. Based on 2007 figures, the application of one model of a sliding scale resulted in a 15% reduction in royalties. This reduction would help to allay concerns about market distortion, particularly at the higher end of the market, but would also reduce the revenue available to the collecting society to administer a more complex scheme. Modelling also shows that a cumulative sliding scale would increase the share of total royalties going to Indigenous artists by a small amount (0.9%) and to living artists by a slightly larger amount (3.4%), while reducing the proportion going to the most successful artists (6.1% less to the top 10 earning artists).

### EFFECT OF FLAT RATE/SLIDING SCALE (2007 data)

<i>Model</i>	<i>Royalties collected</i>	<i>Royalties to Indigenous artists</i>	<i>Royalties to living artists</i>	<i>Royalties to top 10 artists</i>	<i>Max. royalties to an artist</i>
Flat rate (5%)	\$5,023,192	\$780,150 (15.5%)	\$1,404,727 (28.0%)	\$2,410,565 (48.0%)	\$630,601
Access Economics cumulative sliding scale	\$4,276,622	\$700,675 (16.4%)	\$1,344,741 (31.4%)	\$1,793,926 (41.9%)	\$379,558

Source: Access Economics modelling

All results are based on life +70 years duration, no threshold, no royalty cap and administration costs of 20%

All royalty values refer to royalties net of administration charge.

NB: Due to the unavailability of suitable data from commercial galleries, Access Economics modelling is based on auction house data only.

#### *Absence of a Cap*

The Bill does not include any provision to limit the amount of royalty payable per resale by imposing a cap.

In the European Union, a cap is employed as a way of addressing claims that a resale royalty will suppress prices for high-value works. This is based on the assumption that large royalties on significant sale items would discourage buyers and dampen the market. By capping the royalty payable, buyers are protected and the cost of the royalty is not significant in comparison to the costs of relocating individual sales to offshore markets that do not operate a resale royalty scheme (with the associated freight, import taxes, and other costs).

However, it was considered that the imposition of a cap would penalise successful artists. It was considered inconsistent with the nature of the right, which ensures an ongoing interest for all artists in their work. It would also reduce the overall amount a scheme may collect and consequently the funds available to cover administrative costs. While a cap is a feature of the United Kingdom's scheme, it was considered unsustainable in the smaller Australian art market. It was also considered that a cap would adversely affect the ability of the scheme to be self-sustaining. It may also be valuable to note the Myer Report's findings that Australian artworks generally achieve the highest prices within Australia and that this made relocation of sales to overseas markets that do not operate a resale royalty scheme less likely.

Access Economics modelling showed that a cap would affect a small proportion of sales: a \$20,000 cap on a 5% flat rate resale royalty would have affected only 0.42% of auction sales in 2007, while a \$50,000 cap would have affected only 0.16% of auction sales. The impact on total royalties collected would be significantly greater, however, with a \$20,000 cap resulting in a 17% reduction in total royalties collected and a \$50,000 cap resulting in a 7.5% reduction in total royalties collected. There is also potential for a cap to distort market values near the cap level.

### **EFFECT OF CAP (2007 data)**

<i>Cap on resale royalty payable per sale</i>	<i>Equivalent sale price</i>	<i>Royalties collected</i>	<i>Estimated % of sales affected</i>	<i>Reduction in royalties collected</i>
None	N/A	\$5,023,192	0%	N/A
\$20,000	\$500,000	\$4,156,880	0.42% (34)	17%
\$50,000	\$1,250,000	\$4,646,126	0.16% (13)	7.5%

Source: Access Economics modelling

All results are based on a flat rate of 5%, life +70 years duration, no threshold and administration costs of 20%

All royalty values refer to royalties net of administration charge.

NB: Due to the unavailability of suitable data from commercial galleries, Access Economics modelling is based on auction house data only.

### ***Liability***

The Bill includes provisions setting out legal liability to pay the resale royalty. The liability provision is intended to result in an outcome that is both fair and enforceable in a practical, effective and efficient way. The arrangement reflects that adopted in the United Kingdom's legislation. As the seller is always one of the liable parties, this model is also consistent with the EU Directive, which argues that the seller should bear the burden of responsibility as they earn the greatest financial benefit from the resale. The EU Directive does, however, allow member states to choose how to impose liability.

This model is intended to offer the advantages of allowing an art market intermediary to protect the identity of its clients (both buyers and sellers) where required or requested, and increases the likelihood of the collecting organisation being able to pursue and collect the royalties owing through an art market intermediary, rather than through private individuals (who may reside overseas), and ensure timely payment of royalties to artists. Joint and several liability would allow the intermediary to pursue the payment from either the buyer or seller through any arrangement they have instituted as a condition of sale or purchase. This is intended to allay any fears of art market professionals that joint liability will leave them to bear the entire burden of the royalty payment.

### ***Collection***

The Bill provides for collective management through a single collecting society as the default model for administering the resale royalty scheme. However, the Bill also would enable a right holder to notify the collecting society that it does not want the collecting society to collect the resale royalty owing on a particular commercial resale. This does not amount to a waiver of the right, nor to a blanket 'opt out' provision, but allows a right holder a degree of choice in how to exercise the right in relation to particular commercial resales. The right holder would then have the option of choosing to pursue the royalty on that particular transaction as an individual.

In general, collective management was considered the preferred option as individual artists may have great difficulty in enforcing their right. Collective management also increases efficiency, providing revenue to the collecting society to fulfil its functions, rather than leaving it with nothing more than a monitoring role. Importantly, it would also be significantly less onerous for art market intermediaries to deal with a collecting society rather than multiple individuals. Providing for collective

management as a default position, rather than requiring artists to register with the collecting society, is intended to remove the issue of significantly disadvantaging artists who may have more difficulty in accessing information about the scheme or about the collecting society, or who may not have access to online registration facilities. This was thought likely to particularly affect young and emerging artists, artists from regional areas, and Indigenous artists, many of whom live in remote communities.

The Bill provides for a single collecting society, rather than multiple competing societies, as this was considered the most straightforward model for artists and business to deal with, as well as reflective of the limited room for competition in a small market. It is likely that any benefit from competition would be offset by loss of economies of scale. There is very little room to compete when the resale scheme is so tightly regulated in terms of all the other parameters. Societies can only compete on the rate of administration they charge and the level of service they provide to artists. A scheme with multiple collecting societies also creates an increased administrative burden for businesses which have to complete multiple sets of paperwork and reporting.

The EU Directive leaves this matter open for member states to decide and notes that establishing a collecting society is one possibility (although leaving collection up to individual artists is also a possibility).

#### ***Duration of the resale royalty right***

The Bill proposes that the duration of the resale royalty right be for life of the artist plus 70 years. This allows artists to pass on their economic rights to their heirs. This is consistent with the current term of copyright duration for an artistic work. It is also consistent with the EU Directive. The EU has, however, allowed its member states the option of phasing in the right in two stages: for living artists by 2006 and for the duration of copyright by 2010, with an option to extend the derogation until 2012 following application to the EU. The United Kingdom has exercised this option to delay extending the right. There is considerable resistance from the United Kingdom's art market to the extension of the duration of the right beyond the life of the artist and it is unclear what the outcome of such campaigning will be.

It was considered that the Australian art market is too small to sustain a scheme for living artists only. It was also decided not to adopt a staged introduction similar to that in the EU as it would duplicate the administrative and education "learning curve" for all art market participants.

#### ***Nature of the resale royalty right***

The Bill provides that the resale royalty right be inalienable and unable to be waived. This is intended to ensure artists cannot be exploited by being persuaded or coerced to waive or reassign their right at primary sale. The Berne Convention provides that the right is an 'inalienable' right during the life of the artist which passes on his or her death to persons or institutions authorised in national law.

#### ***Access to information***

The Bill includes provisions regarding obligations to provide information and rights to access information to ensure that the collecting organisation has the information

necessary to secure payment of a resale royalty from any person liable for payment, with recourse to the courts if necessary. The collecting society's right to request information endures for six years after the date of the resale, in keeping with the duration of the liability to pay and with the statute of limitations in relation to recovery of debts in most Australian jurisdictions. The provisions relating to the collecting society's reporting obligations require it to protect the confidentiality of personal and commercially sensitive information gathered in the course of administering the scheme. The conditions for the collecting society's appointment also require it to allow right holders and their agents access to the society's records, thereby guaranteeing access to relevant information regarding their rights and royalties owing.

These provisions are intended to legally support the effective collection of resale royalty payments, for a reasonable length of time, while providing appropriate privacy for the parties responsible for payment.

### ***Controls on collecting society***

To ensure the collecting society is held accountable and operates transparently, and to limit its capacity to take advantage of its monopoly in collecting resale royalties, the Bill contains a number of provisions referring to the collecting society's appointment, reporting obligations and rules. The collecting society would be required to report publicly each year on its operations and finances, including tabling its annual report in the Parliament. The Bill also provides that the organisation be not-for-profit and that it be appointed for a fixed period, with renewal subject to robust financial and performance review. The society would have to inform the Minister of changes to its rules and its appointment could be revoked in certain circumstances, such as not fulfilling its role appropriately.

These provisions coincide with the EU Directive's statement that member states should ensure that collecting societies operate in a transparent and efficient manner.

### ***International Reciprocity***

The Bill provides for international reciprocity through the operation of the Berne Convention (*Berne Convention for the Protection of Literary and Artistic Works*). The Berne Convention includes an optional clause (14<sup>ter</sup>) stating artists, with respect to their original works of art, shall "enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work."

Under the Berne Convention, an artist may claim the protection of a resale royalty right in a country that is party to the Convention provided the country to which the artist belongs recognises the resale royalty right. If their country recognises the right, protection may only be claimed in other member countries to the extent that such countries recognise the right.