

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 267

Issued by the Minister for the Arts

Resale Royalty Right for Visual Artists Act 2009

Resale Royalty Right for Visual Artists Regulations 2011

This explanatory statement relates to an instrument made pursuant to the *Resale Royalty Right for Visual Artists Act 2009* (the Act) entitled *Resale Royalty Right for Visual Artists Regulations 2011*.

Legislative Authority

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.

Reason for New Regulations

The Act received Royal Assent on 9 December 2009. The Act established a right for visual artists to receive five percent of the sale price when their work is resold commercially for \$1000 or more. The Act is not retrospective and only applies to commercial resales of artworks purchased on commencement of Part 2 of the Act on 9 June 2010.

The purpose of the proposed Regulations is to clarify and streamline the operation of the resale royalty scheme, following feedback from art market professionals.

Consultation

Consultation has been undertaken with Copyright Agency Limited (CAL), the collecting society appointed under section 35 of the Act, to identify minor changes to the reporting regime for commercial resales with the aim of streamlining and simplifying processes. As the regulations respond to feedback received by CAL from art market professionals, and will have a positive impact by reducing the reporting burden on sellers, formal consultation has not been undertaken.

Details of the *Resale Royalty Right for Visual Artists Regulations 2011*

Regulation 1 – Name of Regulations

This regulation sets out the name of the Regulations as the *Resale Royalty Right for Visual Artists Regulations 2011*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Definition

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

Regulation 4 – Excluded Class of Transfer

This regulation contains a table which sets out excluded classes of transfer of ownership of an artwork for paragraph 8(1)(c) of the Act. Item 1 of the table provides that 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 is an excluded class of transfer.

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 to report the sale to the collecting society under section 28 of the Act or comply with any other provisions in the Act in relation to commercial resales. It is intended that this regulation will significantly reduce the reporting requirements for sellers.

Regulation 5 – Format of notice of commercial resale

This regulation provides that for section 28 of the Act, the Minister may, by legislative instrument, determine a format of notice of commercial resale. A format for the 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 more efficiently.

Regulation 6 – Notice of commercial resale

Sub-regulation 6(1) 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 or a description of the artwork;
- (e) the artist’s name;
- (f) the country of which the artist is a citizen or permanent resident;
- (g) whether the artist is alive;
- (h) if the artist has died – the year of the artist’s death.

Under paragraph 28(2)(c) 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. The purpose of sub-regulation 6(1) 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 their reporting obligations will improve operations for the collecting society and enable more efficient and effective delivery of royalties to artists.

Subregulation 6(2) provides that subregulation (1) does not prevent other combinations of information from being sufficient detail in a notice of commercial resale.