



Appendix B: Australia's new Resale Royalty Scheme—how will it work?

Form of legislation	A resale royalty right will be introduced through stand-alone legislation to ensure artists and art market professionals fully understand their rights and obligations.
Application	Prospective application – the royalty will be applied only to resales of original works of visual art sold through the secondary art market where the seller has acquired the work after the legislation takes effect. It will not be restricted just to works created after the scheme starts.
Nature	The right will be inalienable and unable to be waived.
Entitlement	Royalties are to be paid to artists who are Australian citizens or permanent residents, or their heirs.
Definition of work of art	The right will cover original works of graphic or plastic art, such as a painting, a collage, a drawing, a limited edition print, a sculpture, a ceramic, an item of glassware or a photograph. This definition reflects similar arrangements in the EU.
Duration of right	It will cover works being resold during an artist's lifetime and for 70 years after the artist's death.
Liability	Joint and several liability – where the seller and the other 'relevant person' in the resale are jointly and severally liable to pay. The 'relevant person' is taken to be, in sequence, the agent of the seller, or the agent of the buyer, or, the buyer. This arrangement works effectively in the UK.
Definition of	The scheme will include all resales involving art market professionals, public institutions or organisations, and all resales subsequent to the first transfer of

resale	ownership, regardless of whether the first transfer was made by sale, gift or any other means.
Rate	Royalty to be calculated on a flat rate of 5%, uncapped.
Threshold	The minimum resale price before a royalty is imposed will be \$1000.
Administration	The scheme will be managed by a single collecting organisation, appointed by the Australian Government following an open tender selection process.
International reciprocity	Works by Australian artists sold overseas may also be eligible for royalty payments under the multilateral copyright treaty, the <i>Berne Convention for the Protection of Literary and Artistic Works</i> .

Other countries that acknowledge a resale royalty right for visual artists:

Algeria, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Congo, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guinea, Holy See, Hungary, Italy, Ireland, Ivory Coast, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mongolia, Morocco, Netherlands, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Senegal, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, United Kingdom and Uruguay.

Prospective application

Prospective application means the new resale royalty right will apply to the resale of **all** works of art **acquired** after the legislation comes into effect.

It does not mean the resale royalty right applies only to works **created** after the legislation comes into effect. Resales of existing works of art acquired after the right commences, including works by deceased artists, will be covered by the scheme.

This is to ensure that buyers of works of art make their purchases with the knowledge that a royalty may be payable if they decide to re-sell works.

Examples of how the prospective resale royalty right will work

Deceased estate

A sculpture created in 1994 by a now-deceased artist and first purchased in 1995 sells at auction for \$800,000 in August 2009, after the resale royalty right legislation has come into effect.

There will be no royalty payable to the artist on this sale, as it is the first transfer of ownership of the work following the introduction of the resale royalty right.

The same sculpture is sold again through a dealer in July 2010 for \$900,000. This second sale triggers a royalty payment of \$45,000 (less administration costs) which would be paid to the heir of the deceased artist.

Inheritance

A collector who had purchased a limited edition etching in 2001 for \$5,000 dies in 2010, after the resale royalty right legislation comes into effect, and leaves the etching to her son in her will.

In 2012, the son sells the etching at auction for \$7,000. This resale triggers a royalty payment to the artist of \$350 (less administration costs), as the seller (the son) had acquired the work following the introduction of the resale right.

Indigenous art

In July 2009, after the resale royalty right legislation has come into effect, a gallery owner negotiates with an Indigenous art centre the outright purchase of a range of works. One canvas is purchased for \$10,000.

The gallery owner puts the work up for sale at an exhibition in December 2009, and the canvas is purchased by an investor for \$16,000.

A royalty payment to the artist of \$800 (less administration costs) is triggered as the gallery owner acquired the work following the introduction of the resale right.

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