
The Parliament of the Commonwealth of Australia

Resale Royalty Right for Visual Artists Bill 2008

House of Representatives
Standing Committee on Climate Change, Water, Environment and the Arts

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Foreword

On 28 November 2008 the House of Representatives standing Committee on Climate Change, Water, Environment and the Arts was asked to examine the *Resale Royalty Right for Visual Artist Bill 2008* to see whether the Bill would achieve the stated aims and objectives as outlined in the Minister's second reading speech and other supporting documentation.

The Committee found that there was widespread support for a resale royalty scheme but these supporters feel that the current legislation would deliver very little by way of royalties to artists at the commencement of the proposed scheme. Many also felt that the proposed scheme was out of step with other schemes already in place around the world.

However, there were others who believed any sort of royalty scheme would only favour the already successful artists and the imposition of another levy on art purchases may adversely affect the primary art market and future resales of artwork may go offshore to be sold in markets where no such scheme exists.

The Committee was mindful of these competing views throughout its deliberations and it has concluded that a number of matters need to be further investigated before the Bill proceeds.

While there were a number of issues raised throughout the inquiry, the success or otherwise of the scheme came down to two issues: whether existing artwork should be included in the scheme from day one and whether individual artists should be able to opt out completely and have the right to collect the royalty themselves.


While it was not the stated aim of the Department of the Environment, Water, Heritage and the Arts to put forward a scheme whereby the first resale of existing artwork would be excluded from the royalty scheme at the commencement, it did

so because it was advised that the inclusion of all resales from the outset would render the scheme unconstitutional.

After considering all the submissions and taking evidence from a number of witnesses, the Committee came to the view that there was conflicting legal advice regarding the treatment of existing artwork and, considering the importance of this matter, it has concluded that the Minister should seek further legal advice before proceeding with the Bill. On the second matter, the Committee was very mindful of the inalienable right pertaining to this scheme and that no-one should be able to take that right away from the artists. However, it has concluded that this right is not compromised by the decision to appoint a sole collecting society as long as the artists can still choose to say no to the collection of that royalty owed to them on a case by case basis.

I am very grateful to all my fellow Committee members who have had to work their way through a number of very complex issues and have endorsed the findings contained within this report. The task was not easy but the Committee has concluded that, subject to the recommendations made in this report, the Bill should proceed.

Jennie George
Chair



Membership of the Committee

Chair	Jennie George	
Deputy Chair	Dr Mal Washer	
Members	The Hon John Cobb	Ms Kirsten Livermore
	Mrs Yvette D'Ath	Ms Nola Marino
	Mr Mark Dreyfus QC	The Hon Bruce Scott
	Mrs Julia Irwin	Mr Tony Zappia

Committee Secretariat

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	Ms Adrienne Batts



List of abbreviations

ACGA	Australian Commercial Galleries Association
ARR	Artists Resale Right
CISAC	International Confederation of Societies of Authors and Composers
DACS	Design and Copyright Society (UK)
DCITA	Department of Communications, Information Technology and the Arts (former department)
DEWHA	Department of the Environment, Water, Heritage and the Arts
EEC	European Economic Commission
EU	European Union
GST	Goods and Services Tax
HCA	High Court of Australia
NAVA	National Association for the Visual Arts Ltd.
NZ	New Zealand
SC	Senior Counsel
UK	United Kingdom