

## Committee's comments and recommendations

- 3.1 The Committee believes there is general widespread support for a resale royalty scheme for visual artists, but there are varying views about the actual content and operation of such a scheme.
- 3.2 The current legislation has been drafted after many years of inquiries, reports and consultations. Indeed, the Minister in his second reading speech said that the decision to introduce a resale royalty right for visual artists had been a long time coming.
- 3.3 The Committee believes that, subject to the following recommendations, the Bill should proceed.

### Recommendation 1

- 3.4 **In order to ensure the best possible description of what type of artwork is likely to be included in the scheme, as outlined in the Explanatory Memorandum, the Committee recommends that clause 7(2) of the Bill be amended to include batik, weaving, or other forms of fine art textiles; installations; fine art jewellery; artist's books; carvings; and multimedia artworks, digital and video art.**

## **Recommendation 2**

- 3.5 The Committee recommends that clause 8(3)(d) of the Bill be amended to reflect the full range of transactions involving the 'commercial' resale of artwork (eg the Internet) and to broaden the definition of art market professional to include 'art market dealer', in lieu of 'art dealer' in order to capture other commercial operators whose primary business may not be artwork but nonetheless sell artwork from time to time.

## **Recommendation 3**

- 3.6 The Committee recommends that:
- The Minister for the Environment, Heritage and the Arts seek further legal advice on the need to include clause 11 in the Bill and whether a compensation (fail-safe) clause would overcome any constitutional concerns;
  - The Minister seek further legal advice on the possibility of amending clause 20 to exclude 'sellers' from those persons who are 'jointly and severally liable to pay the royalty on the commercial resale of an artwork'. If this change is acceptable, then it may obviate the necessity to include clause 11 because the scheme will not involve any consideration of purchase of goods on other than just terms as specified under s.51(xxxi) of the Constitution (noting that the EU Directive allows member states to choose who is liable to pay the royalty); and
  - In the event that clause 11 remains in the Bill, the Minister provide a full explanation as to the reasoning behind this decision in any revised Explanatory Memorandum and at the resumption of the second reading debate on the Bill.

## **Recommendation 4**

- 3.7 In the event that Indigenous visual artists do not make a will, the Committee recommends that clause 15(2) of the Bill be amended by adding the following words after 'rules of intestate succession' – add 'and in accordance with Aboriginal customary law'.

**Recommendation 5**

- 3.8 In order to acknowledge some of the broader issues in relation to Indigenous artists and their artwork, the Committee recommends that the principle of communal ownership of artwork be reflected in part 2, division 2 of the Bill.

**Recommendation 6**

- 3.9 In order to prevent any unintended consequences arising from the 'secondary' resale of Indigenous artwork, the Committee recommends that Indigenous art centres that pay their artists up-front for their work be exempt from the payment of the resale royalty for artwork purchased and resold within 12 months.

**Recommendation 7**

- 3.10 The Committee fully supports the inclusion of clause 33 (resale royalty right absolutely inalienable). However, it is mindful of the rights of the individual artist and whether or not they wish to participate in such a scheme and the need to establish a viable and robust scheme. The Committee therefore recommends that clause 23(1) be redrafted to give artists the right to opt-out of the scheme on a case by case basis but if they elect to receive royalties from future resales of their artwork this must only be done through the appointed collecting society.

This will also assist the collecting society, under clause 22, from undertaking unnecessary follow-up action following the commercial resale of artwork and prevent a multiplicity of alternative collecting agencies being established, causing confusion with respect to who is responsible for publishing notice of commercial resales and related follow-up action.

**Recommendation 8**

- 3.11 The collecting society is required to publish the details of all commercial resales of artwork on its website (clause 22(a)). It is also incumbent on the holders of the resale royalty right under clause 27(1) to provide the

collecting society with written notice regarding any likely claim. It has been drawn to the attention of the Committee that some artists, whether it be a lifestyle choice or simply one of economics, may not have access to a computer.

The Committee therefore recommends that the collecting society uses its best endeavours to locate all holders of the resale royalty right through both electronic and other means. To achieve this, a visual artist's registration database should be established at the commencement of the scheme to ensure timely distribution of information and payment of royalties.

### **Recommendation 9**

- 3.12 Given the very tight reporting timeframe for this inquiry, the Committee recommends that the Department of the Environment, Water, Heritage and the Arts undertake a review of the scheme within three to five years of the commencement date.

### **Recommendation 10**

- 3.13 In order for as many artists and their estates to benefit from the introduction of a resale royalty scheme, the Committee recommends that part of the funds set aside to establish the scheme be used to provide timely and educative material to all participants, with special attention to Indigenous artists, to help facilitate a smooth implementation of the scheme.

Jennie George

Chair

20 February 2009