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AA&ADA

Wednesday, 21 January 2009

Mr. Peter Keele  
Committee Secretary  
Standing Committee On Climate Change, Water, Environment and the Arts  
PO Box 6021  
House of Representatives  
Parliament House  
Canberra ACT 2600

**For the Attention of the House of Representatives Standing Committee on  
Climate Change, Water, Environment and the Arts.**

**Submission from the Australian Antique and Art Dealers Association (AAADA)  
re: Artists Resale Royalty**

Dear Mr. Keele,

The AAADA represents 135 of the leading dealers in the re-sale market of art in Australia. It is the single largest industry body specifically catering for the re-sale market. Formed in 1992, the AAADA was the coming together of smaller State Associations, augmented more than 40 years ago.

The Australian Antique and Art Dealers Association is the peak Australian industry body representing those dealers at the front line of the re-sale of works of art and the plastic arts, and those businesses and individuals likely to be affected by the introduction of this legislation.

Members of the AAADA have written and continue to publish the major texts relevant to Australian collectors and the art market. Our immediate past President, John Furphy, publishes and collates The Australian Art Sales Digest. This is a database of past auction results of over 345,000 works by more than 12,100 artists who have either lived or worked in Australia or New Zealand, which have been offered for sale in Australia and New Zealand over the last thirty-five years. It covers over 1,860 auction sales from over 52 auction houses, and extends back to the early 1970s. This would be the source material for the Artists Resale Royalty.

AAADA members are called upon by all of Australia's leading public Art Galleries and collecting institutions for their expertise. They are consulted by Customs, the Taxation Department and other Government institutions ie. many are Approved Valuers under the Cultural Gifts Program. The AAADA is also a member of C.I.N.O.A - *Confédération Internationale des Négociants en Oeuvres d'Art*, founded in 1935, representing 28 art and antique associations from 19 countries and some 5000 affiliate dealers located worldwide. We know the subject, the needs of artists and the market.

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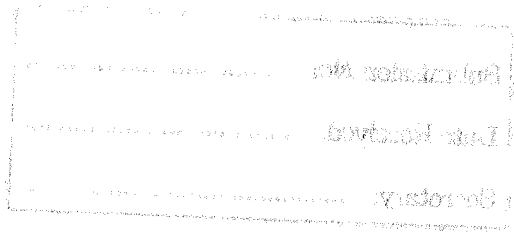
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*A member of the Confédération  
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en Oeuvres D'Art*





It comes as a great surprise therefore that despite the information issued by The Hon Peter Garrett and The Department of Climate Change Water, Environment and the Arts, advising thorough industry consultation, that neither the AAADA, John Furphy nor myself have ever been contacted by any persons about the introduction of the Artists Resale Royalty.

Furthermore, The Hon Mr Garrett, uses the platform of the 1998 Australian Institute of Aboriginal and Torres Strait Islander Studies report Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property and the 2002 Rupert Myer report on the Contemporary Visual Arts and Craft Inquiry as his rationale for the introduction of such a scheme in Australia. The issues of resale of Aboriginal art are at the heart of the introduction of the scheme, though reflect the inability of Legislation to deal with that otherwise Constitutionally cultural issue.

Members of the AAADA are at the front line of this issue – both as galleries representing new work produced by contemporary Aboriginal artists, and dealing in the second hand work of both living and dead artists. Galleries know the artists and their families better than anyone else. Without them, there would also be no market or value for the work. Australian Aboriginal Art is Australia's great contribution to the history of world art.

Until a scheme for administration of payments to Aboriginal artists or their heirs is developed that acknowledges the matriarchic nature of traditional Aboriginal society -which Australian law is not yet set up for - the scheme cannot deliver in the way that the Hon Mr Garrett wishes.

**How does the proposed scheme, as advised to your Department by Viscopy, stack up against others?**

The proposed scheme is for a flat 5% on all sales over AUD\$1000. This is the highest rate in the world, compared with those countries that have similar schemes. In the UK , where it has been most recently introduced, the rates are a sliding scale between 4% and 0.25%. A flat scale advantages top end artists and the collecting agency at the expense of new, often struggling, emerging artists.

There appears to be no calculation of the costs to the businesses to which this will apply. These have been described by your 'independent advisers' as minimal. This is incorrect. Prior to its introduction in the UK in 2006, similar advice was that each transaction would cost businesses 'as little as 40p ea'. A review of the scheme conducted in 2008, showed that the real averaged cost per transaction excluding set up was £23; including set up was £53 per transaction – or approx AUD \$60 & \$120. The advice is skewed to sell the concept and is neither balanced nor realistic.

The proposed Australian scheme applies to works of art by deceased artists and is payable to their heirs or families until 70 years after their death. On January 5 2009 the UK Government decided to exclude artists heirs from Artists Resale Right (ARR).

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John Denham, UK Secretary of State for Innovation, Universities and Skills, has written to the European Commission's Internal Market quoting the following reasons;

"We are committed to supporting businesses, including the UK art trade, through the current downturn. Applying the resale right to deceased artists at this time would place a considerable burden on the art trade."

"If the art traders are seeing a reduction in business they will not only sell fewer works – but will not buy them from artists either. This will have a knock-on effect for artists who will find that there is less of a market for their work."

As of the 19<sup>th</sup> January 2009, the Irish Government decided not to apply Artist Resale Rights to deceased artists. The reasons cited;

- implementation would greatly increase the number of liable sales to ARR, placing further pressure on already stretched operational systems, art dealers and auction houses.
- a level playing field has not yet been achieved between schemes from differing countries where the scheme applies
- to avoid creating a distortion of trade and loss of business to art houses, particularly against the backdrop of the current difficult economic situation.

The conclusions from research obtained by the British Art Market Federation in September 2008, upon which the above decisions were made are;

- Artists Resale Royalty does not, as its advocates claim, enable artists to share in the increase in the value of their work. It applies to all sales, whether or not the value has increased – thereby benefitting only the collecting agency.
- Artists Resale Royalty is a very inefficient way of benefitting artists in financial need. In the UK, the largest art market in Europe, **only approx 1500 artists living in the EU and other qualifying countries** have received any benefit. Artists have a less than 1% chance of receiving any benefit at all. The majority of payments that are made go to artists that are already commercially successful.
- there is no evidence therefore that Artists Resale Royalty encourages artistic activity.

***Why then, in the light of serious international review and analysis does the Hon Mr Peter Garrett think that the introduction of this scheme is timely or beneficial?***

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What also fails to be analysed by the Hon Mr Garrett is the cultural effect of the introduction of the scheme. In discussions held by myself with the British Art Market Federation and BADA (the British Antique Dealers Association), the most frequent comment was " America and Asia must be delighted that Australia is so stupid as to send its contemporary art resale market offshore". Wherever Artist Resale Royalty schemes do not apply, markets blossom. The UK before introduction was second to the US in the value of contemporary art sales. It is no longer, China now holds this position. Introduction in Australia will result in the offshore sale of international quality Australian Aboriginal art, which would be a great tragedy.

Nor does the introduction of Artist Resale Royalty replace Government funding and development of the Arts. It may only be seen as an administrative cost to Treasury benefitting solely the collecting agency. The Hon Mr Peter Garrett could not pick a worse economic climate to introduce ARR. 5% at purchase and 5% at sale – effectively 10% on top of the transaction. This becomes a flat 10 % and is not calculated on the margin of profit. So it is therefore more than GST and subject to GST. So how has the Hon Mr Peter Garrett developed his scheme in such a vacuum?

Joanna Cave, formerly of Britain's Design and Artists Copyright Society, was brought to Australia in September last year to introduce the scheme, and to ultimately run Viscopy's administration of the Australian Artists Resale Royalty. Viscopy is advising The Department of Environment, Water, Heritage and the Arts on the 'fine tuning of the best scheme for Australia". Your department notes; "The Scheme will be administered by a single collecting agency, appointed by the Australian Government following an open tender selection process".

If however, Joanna Cave has already been brought to Australia to administer the scheme as Viscopy's new Chief Executive, as an advisor to your department, one may suggest this process has been pre-empted, despite her stated need for 'careful legislation".

**The Australian Antique and Art Dealers Association rejects outright the introduction of Artists Resale Royalty and the processes taken to date.**

Yours Sincerely,



Warwick Oakman  
President