Manatū Taonga
Ministry for Culture & Heritage

Discussion Document

Resale Right for Visual Artists Regulations

13 APRIL - 25 MAY

Te Kāwanatanga o Aotearoa
New Zealand Government

Contents

How to have your say

Manatū Taonga Ministry for Culture and Heritage is seeking written submissions on the proposals raised in this discussion document by 25 May 2023.

This document includes a number of questions to guide submissions. You can choose to respond to any or all of these questions.

How to make your submission

A. If you want to make a detailed submission addressing the questions in the discussion document, you can fill out a submission form. Download the Resale Right for Visual Artists Regulations submission form from Manatū Taonga's website. Once you have filled out the form, you can either:

- Send your submission to: artistresaleroyalty@mch.govt.nz
- Mail your submission to:
  Arts Policy
  Manatū Taonga Ministry for Culture and Heritage
  PO Box 5364 Wellington 6140

B. If you have any questions about the submissions process, would like to provide a more general written submission, would like to request a phone call, or if you would like a hard copy of this discussion document, please contact artistresaleroyalty@mch.govt.nz.

Use and sharing of information

Manatū Taonga will use the information you provide to inform advice to government about the Resale Right for Visual Artists Regulations. We may contact you directly if we want to clarify any matters you raise.

Submissions are subject to requests under the Official Information Act 1982. Please clearly indicate in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld, together with the reasons for withholding the information. Manatū Taonga will take such objections into account when responding to requests under the Official Information Act 1982.

The Privacy Act 2020 applies to submissions. Any personal information you supply to Manatū Taonga while making a submission will only be used to assist in the development of policy advice. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that Manatū Taonga may publish.

Minister's foreword

The establishment of an artist resale royalty scheme is an important step to support emerging and established visual artists in Aotearoa.

Government is committed to recognising the value and unique perspective our immensely skilled visual artists contribute to Aotearoa New Zealand. Beyond the practical monetary acknowledgement, an artist resale royalty scheme provides confirmation for our artists that they have rights, and that their cultural and societal contribution is valued.

Currently, people who buy and sell artwork on the secondary art market make money on artworks when an artist's reputation grows. However, none of this profit goes to the artist.

The Resale Right for Visual Artists Bill has been introduced to Parliament to address this disparity. The Bill establishes an artist resale royalty scheme that will support our visual artists by ensuring a five percent royalty is collected when their work is sold on the resale market. The Bill also enables the responsible Minister to appoint a collection agency that will collect and distribute royalties.

The royalty will be a flat rate of five percent before any additions, deductions, or other charges, ensuring it does not place too large a burden on buyers, sellers, and art market professionals. This scheme is in line with the Free Trade Agreements New Zealand has negotiated with the United Kingdom and the European Union.

This discussion document consults on proposals for regulations that will support the implementation of the Bill. It proposes that the Resale Right for Visual Artists Regulations provide important supporting operational details, including the dollar sale threshold above which the artist resale royalty applies, and how the agency appointed to collect royalties on behalf of artists should operate.

The regulations cannot be made until the Bill is enacted. We are consulting now to give you the opportunity to provide feedback on the proposed details of the scheme.

We want to hear your views on the proposed options in this document and how we can ensure that the regulatory requirements for the artist resale royalty scheme provide the best outcomes for visual artists and the secondary art market.

Thank you for taking the time to engage on these important issues. I look forward to hearing your ideas on how regulations can best support the proposed new artist resale royalty scheme.

Hon Carmel Sepuloni
Minister for Arts, Culture and Heritage

Part One: Overview of this document

The purpose of this discussion document

The purpose of this discussion document is to seek feedback on proposals for the Resale Right for Visual Artists Regulations (the regulations).

The government is introducing an artist resale royalty (ARR) scheme to Aotearoa New Zealand. The scheme provides a resale right to eligible visual artists (or their estates), meaning that eligible artists will receive a royalty when their artwork sells on the secondary art market.

The scheme will be introduced through a combination of primary legislation (the Resale Right for Visual Artists Bill) and secondary legislation (the Resale Right for Visual Artists Regulations). The legislation will enable Aotearoa New Zealand to meet commitments under the Free Trade Agreement it has signed with the United Kingdom and the Free Trade Agreement negotiated with the European Union, which is yet to be signed. For more information about the difference between primary and secondary legislation, see Appendix 1.

The Resale Right for Visual Artists Bill (the Bill) will establish the key elements of the scheme (outlined below); however, regulations are needed to set out the detailed operational settings for the scheme.

Through this consultation, we are seeking your input into how the regulations could:

- be designed to maximise the benefits of the scheme to visual artists and their estates
- minimise the costs and impacts on art market professionals and the market
- support a well-functioning New Zealand secondary art market
- ensure the scheme is as simple and cost effective as possible to administer, with the long-term goal of ultimately becoming self-sustaining.

This document is not seeking feedback on the Bill

This document is not seeking public feedback on the Bill. However, you can make a submission to the Select Committee on the Resale Right for Visual Artists Bill and find more more information on the Bill and the Select Committee submission process on the New Zealand Parliament website.
Make submission to Select Committee. (NZ Parliament)
Bill and Select Committee submission process. (NZ Parliament)

For information on the policy decisions that informed the design of the Bill, see Artist Resale Royalty scheme policy approvals Cabinet paper and the Regulatory Impact Statement: Artist Resale Royalty (Manatū Taonga).

Why are we consulting while the Bill is still being considered by Parliament?

The regulations cannot be made until the Bill is enacted. However, we are consulting now so that people have an opportunity to consider the scheme as a whole and provide feedback on both the Bill (through the Select Committee process) and regulations (through this discussion document) at the same time.

How were the regulatory proposals in this document designed?

The regulatory proposals presented in this discussion document have been informed by research and modelling of the New Zealand art market, analysis of existing overseas artist resale royalty schemes, similar royalty distribution schemes in New Zealand and engagement with the sector.

Manatū Taonga convened a General Advisory Group and a Toi Māori Advisory Group from the arts sector to inform the work on these regulatory proposals.

The two groups included expertise and perspectives of artists including Māori and Pacific artists, art market professionals, art law experts, the museums and galleries sector, and the royalty collection sector.

Your feedback on our regulatory proposals

Your feedback is important to help us ensure that the regulations complement the Resale Right for Visual Artists Bill in a way that best supports artists and the secondary art market.

Next steps

Submissions on the proposals in this document are due by 5pm, 25 May 2023. Your submissions will help us develop recommendations on regulations for the Government to consider towards the end of 2023.

Part Two: Context

What is an artist resale royalty?

The resale royalty right originated in the late 19th century as a way for artists and their families to continue to benefit from their work after its creation, particularly when that work's value increased significantly.

The resale right is enshrined in the 1971 Berne Convention, which is an international agreement governing copyright and affirms an artist's "inalienable right to an interest" in a resale of their work. However, the Convention has no legal force in the absence of national legislation implementing the Convention. New Zealand is a signatory to the Convention but does not have an artist resale royalty scheme in place.

Over 80 countries currently have legislation establishing an artist resale royalty right, including the United Kingdom, Australia, and all European Union member states. Thirty of the 38 countries in the Organisation for Economic Co-operation and Development (OECD) have implemented an artist resale royalty right scheme to date.[1]

Why is an artist resale royalty scheme important for Aotearoa?

The Aotearoa New Zealand art market is made up of the primary market, where new art is sold for the first time, and the secondary market, where existing art that has been sold at least once before is resold.

The New Zealand secondary art market was estimated to be worth approximately $67 million in 2021, compared to an Australian market of an estimated $120.8 million and a global market of approximately $50.1 billion.[2] Both the value of New Zealand artists' work and the number of New Zealand artists' works sold in Aotearoa have fluctuated over the last two decades, but overall have increased.

Currently, people who buy and sell visual artworks on the secondary art market make money on artworks when an artist's reputation grows. However, none of this profit, which is a result of the hard work put in and success achieved by the artist, goes to the artist.

Visual artists have limited options to benefit from their work compared to other creative professionals

The Copyright Act 1994 recognises the rights of creators of works to benefit from reproductions and repeated use of those works, until the copyright expires. For example, musicians and composers receive royalties for performances of their music and novelists receive payment for sales of multiple copies of books they write and for the sale of film rights. Visual artists can grant a licence to a book publisher to reproduce their painting for the cover of a novel and receive a fee in exchange.

Whereas other creative professionals generally derive copyright income from multiple reproductions or repeat performances of their works, visual artists' primary income is largely limited to the one-off initial sale of their individual works on the primary art market. For most visual artists, other than limited copyright licensing, the ability to generate additional revenue from a work currently ends with that first sale.

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1 The OECD is an intergovernmental organisation founded in 1961 to stimulate economic progress and world trade.

2 The total size of New Zealand's secondary art market is difficult to determine because accurate sales figures are not available for all resales. Sales data from the auction houses operating in New Zealand is available and is estimated to comprise approximately 80 percent of all secondary art sales.

Why is now the right time to introduce an artist resale royalty right scheme?

In 2008, the previous Government introduced the Copyright (Artists' Resale Right) Amendment Bill, however, following a change in government, the Bill was set aside. Work began on renewed legislation in 2018 but was put on hold in March 2020 due to the need to prioritise the COVID-19 response.

Now that New Zealand has signed a Free Trade Agreement with the United Kingdom and concluded a Free Trade Agreement negotiation with the European Union, New Zealand will need to implement an artist resale royalty scheme within two years of each agreement's entry into force.

Overview of the Resale Right for Visual Artists Bill

The Resale Right for Visual Artists Bill (the Bill) introduces a new Act to establish an artist resale royalty scheme in New Zealand. The scheme provides a mandatory resale right to eligible visual artists (or their estates) which entitles them to receive a resale royalty payment when their qualifying artwork sells on the secondary art market. The Bill was introduced to Parliament on 28 March 2023 and has been referred to the Social Services and Community Committee.

What sales are covered?

The resale right will apply to resales of visual artwork that occur after the first transfer/sale of the artwork and which involve an art market professional or are to or from a publicly funded museum or art gallery.[3]

Who is an art market professional?

A person who is in the business of dealing in visual artworks.

This includes:

a) persons who carry on business as an auctioneer

b) art dealers

c) art consultants whose business includes dealing in visual artworks.

What is a visual artwork?

Examples of "visual artwork" outlined in the Bill include:

a) visual works of cultural expression of Māori

b) visual works of cultural expression of Pacific peoples

c) paintings, drawings, carvings, engravings, etchings, lithographs, woodcuts, and prints (including books of prints)

d) photographs, sculptures, collages, and models

e) works of art in the form of crafts, ceramics, glassware, jewellery, textiles, weaving, metalware, and furniture

f) visual works of art created using computers or other electronic devices

3 Note that while royalties are collected on sales to or from a publicly funded museum or art gallery in New Zealand, artists cannot expect to receive royalties from equivalent sales in other countries unless the ARR scheme in that country also applies to such sales.

g) visual works of art that are an ethnic or cultural variety of works described in paragraphs (c) to (g).

The definition does not include:

a) a building, as defined in section 2(1) of the Copyright Act 1994

b) a literary work, dramatic work, or musical work as those terms are defined in section 2(1) of the Copyright Act 1994

c) any other class of artwork that is specified by the regulations.

Royalty amount

The resale royalty will be an additional five percent on the resale price (before any additional costs such as GST and buyer's premium[4]).

Who is eligible for the scheme?

A person is an eligible artist if, at the relevant time, they are one of the following:

- a New Zealand citizen (including New Zealand citizens that reside overseas)
- a person domiciled or resident in New Zealand
- a citizen or subject of, or a person domiciled or resident in, a country with which New Zealand has a reciprocal agreement in place.

Who is liable for paying the royalty?

The seller and the art market professional will be jointly and severally liable for payment of the resale royalty. If there is no art market professional involved in the resale, then the seller and the buyer are liable.

The right is inalienable

The right will be inalienable, which means it cannot be waived or transferred to anyone else, except upon the artist's death, when it will transfer to their estate.

Duration of the resale right

The duration of the resale right will be the same as the duration of copyright (currently the life of the artist plus 50 years after death).[5]

Artists can decline payment of the royalty

A resale royalty will always be collected on an eligible resale, but artists may decline to receive a royalty payment.

4 A charge in addition to a hammer price.

5 Both the NZ–UK and the NZ–EU FTAs contain a commitment to extend the term of copyright to 70 years after death. In this event, the duration of the resale right would likewise extend to 70 years after death.

Private sales can opt into the scheme

Private sales between two individuals will not attract a mandatory resale royalty, however, private sales will be able to opt into the scheme and voluntarily pay a royalty if desired.

Collection agency

A non-government, not-for-profit collection agency will be authorised to manage the scheme and, in return, will be entitled to deduct an administrative fee from royalties collected. Manatū Taonga will monitor the performance of this agency.

Enforcement

Legislation will empower the collection agency to pursue civil proceedings against anyone who fails to comply with the scheme's requirements.[6] This would not prevent a right holder taking their own court action independently to enforce their right.

6 Any proceedings in or before any court or tribunal that are not criminal proceedings.

Part Three: Policy proposals for the Resale Right for Visual Artists Regulations

Summary of the policy proposals for the Resale Right for Visual Artists Regulations

The table below provides a summary of the policy proposals for the Resale Right for Visual Artists Regulations outlined in the following sections. At the end of each section will be one to two questions asking for feedback on each of the regulatory proposals.

Section	Regulatory proposals
Resale threshold	Regulations set the price threshold above which artworks will be eligible for the scheme at $1,000.
Administrative fee	Regulations require the Minister to set the administrative fee that will be deducted from the royalty payment to fund the operation of the scheme. Regulations outline what the Minister must consider when making their decision, and require the Minister to provide the collection agency notice of their decision in writing.
Appointment of the collection agency	The regulations outline rules for how the collection agency, that will collect and distribute royalties, is appointed. This includes what happens if the appointment of the collection agency needs to be revoked.
Collection and distribution of the royalty	The regulations outline the process for how the collection agency must collect, hold, and distribute the resale royalty, including what happens if a royalty is declined.
Reporting	The regulations outline the types of records that the collection agency must keep, including records of resale royalty transactions and the financial position of the scheme, alongside the impact the scheme has on participants.
Monitoring of the collection agency	The regulations outline what information needs to be provided for monitoring purposes and require that detailed monitoring arrangements are set out in the contractual agreement between the collection agency and Manatū Taonga.
Dispute resolution	Regulations outline that the collection agency will need to have a formal complaints process if it doesn't already. If a complaint against the collection agency or a dispute between participants in the scheme cannot be resolved by the collection agency, this would progress to independent mediation.
Engagement with participants in the scheme	The regulations outline that the collection agency should be transparent about how the scheme operates and what participants' obligations are. The collection agency would be required to ensure rights holders and participants are informed of any key decisions or changes relating to the operation of the scheme and must seek feedback from participants before changes are implemented.
Cultural fund	Regulations enable the collection agency to establish and operate a cultural fund, into which no more than 75% of declined or unclaimed royalties (or 100% of donated royalties) will be transferred. Regulations enable the collection agency to determine, in consultation with rights holders, the specifics of what this fund should be used for and review this periodically. This could include grants, scholarships, and residencies.

Royalty threshold

This section outlines what a royalty threshold is, why one is needed for the scheme, and the amount Manatū Taonga proposes the regulations set the royalty threshold at.

What is a royalty threshold?

A royalty threshold is the minimum confirmed price an artwork will need to sell for on the secondary market to be eligible to receive a resale royalty payment.

This is the price before any additions or deductions, or other charges, such as a buyer's premium, commission, or GST.

Why do we need a threshold?

Having a threshold makes the scheme simple and easier to enforce. If no threshold is set, it could be difficult for art market professionals to identify all eligible sales, the royalty collection process would be more expensive and time-consuming, and the scheme may not be able to become self-sustaining.

How much will the threshold be set at?

The Resale Right for Visual Artists Bill sets parameters for the royalty threshold. The Bill states that the threshold can be anywhere between $500 and $5,000 and directs the regulations to set the specific threshold.

We propose that the regulations set the royalty threshold at a dollar value of $1,000.

Why that amount?

When setting the threshold amount, we have considered that:

- A $1,000 threshold strikes an appropriate balance between ensuring enough artworks resold are captured by the scheme and that the royalty collected is high enough to offset the cost of collection and distribution.
- A threshold higher than $1,000 would disadvantage emerging artists who tend to make less money from sales. Only 28% of sales through auction houses during 2020 would have met this threshold. A higher threshold risks excluding demographics of artists whose work tends to sell for lower prices, as well as art forms which tend to attract lower resale prices.
- A threshold lower than $1,000 would allow for a wider range of visual artists to benefit from the scheme, however the value of the royalties collected at a $500 threshold would be low, with a minimum royalty of $25 before tax and administrative fees (even if taxed at the lowest tax bracket, this would result in a net payment of $17.38, assuming a 20% administrative fee).
- Collecting and distributing a large volume of low value royalties could have financial impacts for the collection agency as these royalties would only provide a low administrative fee to the agency (e.g. a $500 sale would attract a $5 admin fee). This could make it harder for the scheme to become self-sustaining in the long term.

Question 1A: Do you think the proposed royalty threshold of $1,000 is appropriate? Why or why not? If not, what threshold would you suggest?

Question 1B: Are there any other factors we should consider when determining the royalty threshold?

Administrative fee

This section outlines what an administrative fee is, why the scheme needs an administrative fee to operate and how the administrative fee will be set.

What is an administrative fee?

In return for collecting and distributing the royalty, the Bill provides for the collection agency to deduct a specified percentage of the royalty as an administrative fee. This would be a fee in exchange for the service provided by the collection agency when it collects and distributes royalties. The administrative fee would enable the scheme to be self-sustaining over time and not rely on ongoing government funding.

The setting of the administrative fee will be consistent with:

- the Treasury's guidelines for setting charges in the public sector
- the Office of the Auditor-General's good practice guide for setting and administering fees.

Why is an administrative fee required?

The administrative fee will contribute toward the operating costs required to administer the scheme. This will include:

- IT implementation and support
- communication and marketing
- recruitment and related overheads
- staffing
- meeting the collection agency's monitoring and reporting requirements.

How much will the administrative fee be and why?

We propose that the regulations provide for the administrative fee to be set by the Minister. Based on current market data we estimate that an administrative fee of around 20% would be necessary for the scheme to be self-sustaining.

The administrative fee would be the same whether the royalty is:

- collected in Aotearoa for a rights holder
- collected in Aotearoa for a rights holder in a reciprocating country
- received from a reciprocating country for a rights holder.

How would the Minister set the administrative fee?

We propose that the Minister sets the administrative fee by giving the collection agency notice in writing. However, the Minister's decision will be based on advice the Minister receives from both the collection agency and Manatū Taonga (the monitoring agency).

When setting the administrative fee, the Minister would have to consider:

- future forecasting on likely administrative fees collected and the future operating expenses of the collection agency
- feedback from rights holders.

When reviewing the administrative fee, the Minister would have to consider:

- the total administrative fees collected per year over a minimum three-year period and the operating expenses of the collection agency during that time
- feedback from rights holders.

Will there be a review of the administrative fee?

Yes, the proposal is for the administrative fee level to be reviewed as part of the proposed five-year review, which is part of the operational settings of the scheme. This will help to determine if the fee level is appropriate.

The purpose of the administrative fee is to cover the costs of administering the scheme and nothing else. If the collection agency notices a consistent surplus over five years, this could mean the administrative fee will need to be reviewed and potentially lowered. If the collection agency notices a consistent deficit over five years, this could mean the administrative fee will need to be increased.

Question 2A: Do you agree with the proposed approach for setting the administrative fee? Why or why not?

Appointment of the collection agency

This section outlines the appointment process of the collection agency that we propose is prescribed by regulation, why we need this appointment process, who can be appointed as the collection agency, and how the collection agency will manage its relationships with overseas collection agencies.

What is the appointment process of the collection agency?

The Bill enables the Minister to appoint the collection agency. We propose the regulations require that:

- the Minister considers advice from Manatū Taonga before making a decision on the appointment of the collection agency
- the process for appointment is an open tender process
- the successful organisation is appointed for a fixed term of no more than five years
- in cases of non-performance, the collection agency's appointment can be revoked by the Minister on the advice of Manatū Taonga
- the collection agency can also request to have its appointment revoked. The collection agency has a 12-month transition period from the date of its request for revocation.[7]

Why we need this appointment process

Having an appointment process in the regulations would help to ensure a highly capable organisation is appointed that enables the scheme to meet its objectives to:

- maximise the benefits of the scheme to visual artists and their estates
- minimise the costs and impacts on art market professionals and the market
- support a well-functioning New Zealand secondary market
- ensure the scheme is as simple and cost effective as possible to administer, with the long-term goal of ultimately becoming self-sustaining.

Who can be appointed as the collection agency?

The Bill states that the collection agency must be a non-government, not-for-profit organisation. We are proposing that the regulations provide for only one entity to be appointed as the collection agency at any one time, and this entity must be an organisation with legal status in New Zealand.

How will we ensure that the appointed collection agency will acknowledge and respect the role of Māori as tangata whenua?

The Bill requires the collection agency to act in accordance with operational principles, one of which is to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists in carrying out its functions and duties under the Act.

We are proposing that this will be given effect to through the appointment process of the collection agency, through Manatū Taonga's contract for services with the collection agency and through Manatū Taonga's role in monitoring the agency, and that the regulations will empower this to happen.

7 A revocation is an annulment or cancellation of a statement or agreement.

For example, we propose that the regulations will require a tender process for selecting the collection agency, which will require organisations applying for the role to demonstrate how they will involve Māori in governance and decision-making, including in decisions around the distribution of the cultural fund. This will be a key criterion to determine who the successful collection agency will be.

As part of the operational settings of the scheme, we would also require, as a condition of contract for services, that there is appropriate knowledge and capability in place at the organisation to ensure the scheme is effective for Māori artists. Manatū Taonga will also encourage Māori-led organisations to apply for the role of the collection agency.

The collection agency's adherence to these principles, both those outlined in the Bill and in the contract for services, will be subject to monitoring by Manatū Taonga.

Question 3A: Do you agree with our proposed approach to the appointment of the collection agency? Why or why not?

Question 3B: Are there any other factors that we should consider in the regulations for the appointment of the collection agency?

Collection and distribution of the royalty

This section outlines the process the collection agency will follow when collecting and distributing resale royalties to rights holders.

Why do we need the collection and distribution process?

To enable the smooth and timely distribution of the royalties and to ensure all interested parties are supported to meet their obligations under the scheme.

What would the collection agency be responsible for?

The Bill states that the function of the collection agency is to collect and distribute resale royalties to rights holders. Regulations will state how the collection agency must collect, hold, and distribute resale royalties.

How will the collection agency know when to collect a resale royalty?

The Bill requires the art market professional involved in the resale of the artwork to provide information on the resale to the collection agency. We propose that the regulations state the information must be provided in writing and within 60 days of the completion of the sale.

We propose that the information provided must include enough detail for the collection agency to determine:

- whether a royalty is payable
- the amount of the royalty
- who needs to pay the royalty
- who the royalty is paid to.

What happens when the collection agency receives a resale royalty?

We propose the regulations require the collection agency to:

- use its best endeavours to locate the rights holder or holders
- distribute the royalty to the rights holder or holders, less the collection agency's administrative fee.

What if a rights holder declines to receive a royalty?

We propose the regulations enable a rights holder or holders to provide written notice to the collection agency that they do not want to receive a particular royalty from a resale, or any future royalties. If a royalty is declined it would be retained by the collection agency. An administrative fee would still be deducted from the declined royalty.

What happens if a rights holder changes their mind and would like to receive a specific resale royalty?

We propose the regulations require that a rights holder would need to notify the collection agency in writing that they would like to receive the royalty. This notification would need to occur within three years of when the royalty was declined.

If there is any interest earned on unclaimed or declined royalties, the interest would be owed to the rights holder when they claim the royalty.

What happens if a rights holder changes their mind and would like to receive future royalties?

We propose that a written notice to decline future royalties can be rescinded at any time by the rights holder. Should a new collection agency be appointed, data would be transferred to the new appointed agency.

What happens if the collection agency cannot contact a rights holder?

The royalty would be retained by the collection agency but would be made available at any point in the future to be distributed to the rights holder if they were identified. The Bill provides that the collection agency can establish a register of rights holders to more easily distribute royalty payments to them.

What if a rights holder should have received a royalty but hasn't?

We propose that the regulations enable the rights holder to notify the collection agency that they should have received a resale royalty. The rights holder would need to provide enough information for the collection agency to address this claim. This notification would need to occur within six years of the completion of the sale.

We are proposing that information would need to include:

- proof they are the creator
- evidence that they are eligible for the scheme
- if the claim is from an artist estate, proof that it falls within the set duration
- who is responsible for paying the royalty.

What if the collection agency pays a royalty in error?

We propose that regulations set out what happens if the collection agency wrongly collects a royalty payment:

- If the collection agency collects a royalty when no royalty is due, the agency would return the full amount to the person(s).
- If a royalty is paid to the wrong person, the person(s) who received the royalty will be required to return the payment to the collection agency. The debt would be due within 90 days.

What information will the collection agency make publicly available about the collection and distribution process?

We propose the regulations require the collection agency to develop a publicly available royalty distribution policy (e.g., published on the collection agency's website).

This policy should include information on:

- how the royalty will be collected and distributed (including the timeframe within which royalties will be paid to rights holders)
- how the royalty is treated for tax purposes
- how funds will be held prior to payment
- what the process will be for private sales voluntarily opting in
- the process for royalties from international sales to New Zealand artists
- the collection agency's privacy policy in relation to resale royalties
- the collection agency's dispute resolution service.

Question 4A: Do you agree with the proposals for how the collection agency would collect and distribute royalties? Why or why not?

Question 4B: Are there any other factors we should consider in the regulations relating to how the collection agency collects and distributes royalties?

Reporting

This section outlines what reporting is, why it is necessary and what the collection agency will report on.

What is reporting?

Reporting is a requirement on the collection agency to keep detailed records of how it operates the scheme.

Why do we need reporting?

This enables both the collection agency and the monitoring agency (Manatū Taonga) to identify any emerging problems or opportunities with the scheme. This reporting information can be used to inform decision-making around any changes or refinements to the scheme.

What will the collection agency report on?

Financial records

We propose the regulations require the collection agency to keep financial records of resale royalty transactions and the financial position of the scheme including:

- operating expenses
- administrative fees collected
- transactions of artworks that require a royalty
- royalties collected and distributed
- payments made to the cultural fund.

Other records

The regulations would require the collection agency to keep records of:

- how the scheme is impacting artists, including the specific impacts on Māori and Pacific artists. This would include details on:
    - Māori and Pacific artists' use of the dispute resolution process
    - how many Māori and Pacific artists received a royalty
    - the value of the royalties
    - how many royalties were declined by artists or their estates
    - what proportion of the cultural fund was made up of Māori and Pacific artists' declined or donated royalties
    - any enforcement action taken on behalf of Māori and Pacific artists
- how Māori are being represented in decision-making at the governance and management levels of the collection agency in relation to the scheme
- compliance with the scheme, including any disputes raised and how they have been resolved and any enforcement action taken by the collection agency.

Information on the impacts of the scheme on Māori and Pacific artists would be used during reviews assessing the impacts of the scheme on Māori and Pacific artists, and to enable the scheme to be adjusted to better support those artists.

Regulatory proposals on the auditing of the collection agency

We propose that the regulations require the collection agency's records to be audited after the end of each financial year, with a copy of its audited financial report provided to the Minister within six months.

The financial report would need to be tabled in Parliament by the Minister within thirty Parliament sitting days of receiving the report.

The collection agency would be required to ensure the resale right holders have reasonable access to copies of these records and audited accounts.

Question 5A: Do you agree with the proposed reporting requirements for the collection agency? Why or why not?

Question 5B: Do you think there is anything else the collection agency should report on?

Monitoring of the collection agency

This section outlines what monitoring is, why the collection agency needs monitoring and how it will be monitored. It also sets out the information we are proposing the collection agency would need to provide under regulations.

What is monitoring?

Monitoring is the collecting and analysing of information on a regular basis about the work of the collection agency, to make sure it is meeting the scheme's objectives.

Why does the collection agency need monitoring?

Because the collection agency has duties and functions set out in legislation, it will need to be monitored to ensure it is carrying out these functions satisfactorily. In the early years of the scheme the collection agency will also receive government funding for set-up costs so will need to be monitored to ensure its use of public money is efficient and effective.

How will the collection agency be monitored?

The Bill establishes that the collection agency will be monitored by Manatū Taonga.

Why has Manatū Taonga been chosen as the monitoring agency?

Manatū Taonga has been chosen for this role because it is the government's principal advisor on the cultural system and has the relevant sector expertise, monitoring experience and relationships required to perform this role.

Regulatory proposals for monitoring

We propose the regulations require that monitoring arrangements are set out in the contractual agreement between the collection agency and Manatū Taonga. To ensure that effective monitoring takes place, we propose regulations require the collection agency to provide relevant information to the monitoring agency including on:

- how the scheme is impacting artists, with a specific focus on Māori and Pacific artists
- how Māori are being represented in decision-making at the governance and management levels of the agency in relation to the scheme
- records of royalty transactions
- information on any royalties paid into the cultural fund and how the cultural fund is being operated to benefit artists
- compliance with the scheme, including a record of disputes
- the agency's operating expenses for the scheme
- any enforcement action taken by the agency.

Question 6A: Do you agree with the proposed monitoring arrangements? Why or why not?

Question 6B: Is there anything else that Manatū Taonga should monitor for?

Privacy

This section outlines how the collection agency will manage information in line with the Privacy Act 2020.

What are the privacy requirements in the Privacy Act 2020?

The Privacy Act 2020 governs how organisations and businesses can collect, store, use and share your information, ensuring:

- you know when your information is being collected
- your information is used and shared appropriately
- your information is kept safe and secure
- you can get access to your information.

In line with the Privacy Act 2020, a rights holder will be able to request records of what personal information is held by the collection agency.

How must the collection agency manage rights holders' private information?

We propose that the regulations require the collection agency to have a privacy policy complying with the Privacy Act 2020, outlining what personal information collected is used for. The policy must also detail the measures that will ensure the security and safety of the personal information the collection agency holds.

In line with privacy principles, only information necessary to administer the scheme and meet reporting requirements would be collected from rights holders.

Question 7A: Is there anything else that should be considered in the privacy requirements?

Dispute resolution process

This section outlines what a dispute resolution process is, why the scheme needs one, and how the scheme's dispute resolution process could work.

What is dispute resolution?

A dispute resolution process is a process that can be used to resolve a conflict or dispute, in this case a conflict or dispute about the administration of the scheme.

Why does the scheme need a dispute resolution process?

Having a dispute resolution process means that any concerns raised with the operation of the scheme can be addressed through a fair process, involving all affected parties. This process can act as an alternative pathway to pursuing legal action.

Disputes between participants in the scheme

Disputes between participants in the scheme would initially be referred to the collection agency to work with the parties to resolve the dispute. If the dispute can't be resolved, this would progress to independent mediation. In the event that independent mediation does not resolve complaints against the collection agency, or disputes between participants in the scheme, parties could proceed to arbitration or to court.

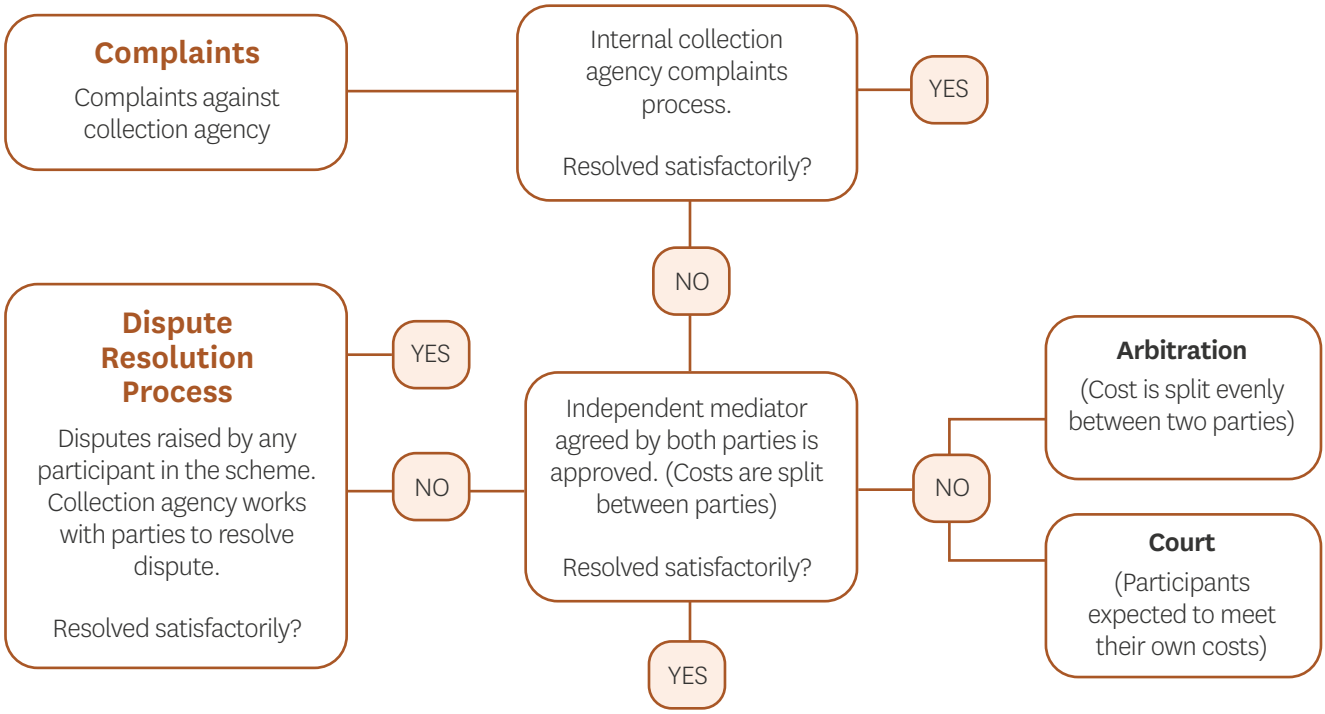
Complaints against the collection agency

We propose that regulations require the collection agency to have a formal complaints process if it doesn't already.

A complaint against the collection agency by a participant in the scheme would be addressed through the collection agency's complaints process in the first instance. If the complaint is not resolved satisfactorily through the complaints process, the complaint could proceed to the dispute resolution process.

Below is a diagram depicting how the proposed dispute resolution process would work.

Figure 1: Proposed dispute resolution process



Question 8A: Do you agree with the proposed dispute resolution process? Why or why not?

Question 8B: Is there anything else that Manatū Taonga should include in the regulations relating to the dispute resolution process?

Engagement with participants in the scheme

For the scheme to function properly, it is important that the way the scheme works is communicated effectively to the public. This section outlines how the collection agency will engage with participants in the scheme.

How would participants know what their rights and obligations are?

The collection agency would have clear communications (e.g., information sheets, FAQs etc.) on how the scheme works, what the obligations are on art market professionals, buyers and sellers and what rights holders' rights are.

How would participants influence how the scheme will be operated?

We propose that the regulations require the collection agency to:

- ensure that participants in the scheme, including rights holders and art market professionals are informed of key decisions and any changes relating to the scheme's operation
- seek feedback from participants in the scheme, including rights holders and art market professionals before making any significant changes to the scheme's operation.

How will the collection agency manage its relationships with overseas collection agencies that are administering reciprocal resale royalty right schemes?

Manatū Taonga is proposing the regulations set out that the collection agency's relationships with overseas collection agencies, in relation to the reciprocal collection and distribution of royalties, be governed by an agreement between the two collection agencies.

Question 9A: Is there anything else Manatū Taonga should include when considering how the scheme engages with participants?

Cultural fund

This section outlines what the cultural fund is, why it's being established and how the fund will be used.

What is the cultural fund?

We propose that regulations enable the collection agency to establish and operate a cultural fund, into which 75% of declined or unclaimed royalties and 100% of donated royalties will be transferred.

Why is the cultural fund being established?

The cultural fund provides a way of enabling royalties that are not distributed to artists to be used for the benefit of visual artists more generally. This will enable the scheme to provide benefits to emerging artists as well as more established artists, which resale royalty schemes traditionally benefit.

How will the cultural fund be used?

The fund will be used to support visual artists' career sustainability.

We propose that regulations enable the collection agency to determine, in consultation with rights holders, the specifics of what this fund should be used for and review this periodically. This could include grants, scholarships, and residencies.

Because we are allowing for unclaimed royalties to be claimed indefinitely and artists who have declined royalties to change their mind within a three-year period, the collection agency will transfer no more than 75% of total unclaimed and declined royalties to the cultural fund. This is to protect against the collection agency incurring financial liabilities it cannot meet in the future. The collection agency would transfer 100% of donated royalties to the cultural fund.

What happens if the collection agency does not establish a cultural fund?

In the absence of a cultural fund at any time in the future, we propose that declined royalties would be held for three years and then returned to the persons who paid the royalty. If the person who paid the royalty cannot be located, the collection agency retains the royalty to be used for the administering of the scheme.

If the collection agency establishes a cultural fund which is then wrapped up, any declined royalties sitting in the fund would go back to the persons who paid the royalty. If they can't be located, the collection agency would retain the money for the purposes of administering the scheme. Unclaimed royalties would be required to be held indefinitely.

Question 10A: Do you agree with the establishment of a cultural fund to support visual artists into which declined, unclaimed and donated royalties will be transferred? Why or why not?

Question 10B: Are there any other factors we should consider in the establishment of a cultural fund to support visual artists?

Part Four: Non-regulatory operational settings

In addition to the regulations, the government will put into place some non-regulatory operational settings that will support the scheme to run smoothly.

This section outlines the operational settings for the appointment and monitoring of the collection agency, as well as operational settings for the collection and distribution of royalties.

Appointments

We propose that when a collection agency is appointed, a contractual agreement (contract for services) between the agency and Manatū Taonga would set out

- the responsibilities and obligations of the collection agency
- agreed outcomes and performance measures
- detail on monitoring arrangements.

The collection agency would need to demonstrate how it would support the transition of operations and information should the agency no longer be the collection agency, either on the direction of Ministers or by choice. Particular attention will be needed regarding the transfer of data in compliance with privacy regulations. Operational settings would also set out a process for how any conflicts of interest are dealt with.

Monitoring

We propose the contractual agreement sets out details on monitoring which could include:

- providing monitoring information on a regular basis
- the collection agency, monitoring agency and/or Minister meeting regularly.

Communications

Both Manatū Taonga and the collection agency will work together to provide clear communication about:

- how the scheme works
- rights and/or obligations for participants in the scheme, including art market professionals, sellers, buyers, and rights holders
- when income under the scheme is taxable.

Five-year review of the scheme

We are proposing to undertake a comprehensive review of the scheme once it has been in operation for five years. The proposed five-year review would be a review of regulations and operational settings of the scheme to determine if any changes are needed to improve the scheme's efficiency and effectiveness. This would include engagement with participants in the scheme and the collection agency.

A five-year timeframe would allow time for the scheme to be fully operational and for sufficient resales data to have been collected to support an effective review.

A further review after ten years, as occurred for the United Kingdom scheme, may be necessary to measure the long-term impacts of the scheme more accurately.

The review would likely be undertaken by Manatū Taonga as the monitoring agency. Participants in the scheme would have opportunities to raise concerns during the consultation phase of the review.

The review would include the following matters:

- the design and details of the resale royalty regulations and operational settings, including the settings such as the threshold, administrative fee, roles and functions of the collection agency and the cultural fund (including the percentage of unclaimed and declined royalties transferred to the cultural fund)
- the scheme's impact on the art market, including on art market professionals, buyers and sellers, and on the overall market
- impacts for Māori visual artists including financial benefits, increased wellbeing, and recognition of their work
- impacts for visual artists including financial benefits, increased wellbeing, and recognition of their work
- whether a five-year period provides enough data for a conclusive measure of the impacts of the scheme.

A specific focus of the review would be looking at the impact of the scheme on Māori artists. Through the reporting Manatū Taonga, as the monitoring agency, would be able to assess how Māori are benefiting relative to others. The review allows for changes to the scheme to be made if necessary.

Appendix 1: What is the difference between primary and secondary legislation?

There are two main types of New Zealand legislation (law):

- primary legislation (Acts of Parliament)
- secondary legislation (law made by someone other than Parliament).

Primary legislation is law that is made by Parliament and must pass through a Parliamentary process, including public scrutiny at Select Committee.

While primary legislation is being considered by parliament it is called a Bill. Once the Bill has passed and become law it becomes an Act.

Regulations are a form of secondary legislation. Regulations are not actions of Parliament, but they are a law-making action made under the delegated authority of an Act. Regulations are the rules that will uphold the Bill and outline what must happen for the Bill to be complied with.

In the case of the ARR scheme, the Bill provides the framework for the scheme and contains many of the key elements of the scheme including details of what artworks and which artists are eligible, the royalty amount and duration, and who is liable to pay the royalty. The regulations provide important supporting operational details like the dollar sale threshold above which the royalty applies, and how the agency collecting royalties on behalf of artists should operate.