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Minister for Arts, Culture and Heritage

Final Policy Decisions for Resale Right for Visual Artists Supporting Regulations

Published Date: 20 September 2023

Date of Cabinet Decision: 21 August 2023.

Title: Final Policy Decisions for Resale Right for Visual Artists Supporting Regulations

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These documents have been proactively released by the Minister for Arts, Culture and Heritage. This package includes the Cabinet paper and other key decision papers, as listed below.

Title: Cabinet paper 'Final policy decisions for Resale Right for Visual Artists supporting regulations'

Cabinet Social Wellbeing Committee Minute of Decision (SWC-23-MIN-0108)

Cabinet Minute of Decision (CAB-23-MIN-0374)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

9(2)(f)(iv) to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials

[Security classification – In Confidence]

Office of the Minister for Arts, Culture and Heritage
Cabinet Social Wellbeing Committee

Final policy decisions for Resale Right for Visual Artists supporting regulations

Proposal

- 1 This paper presents policy recommendations for supporting regulations for the *Resale Right for Visual Artists Bill* (the Bill) and seeks your approval to submit drafting instructions to the Parliamentary Counsel Office (PCO).

Relation to government priorities

- 2 By enabling visual artists to benefit financially from the resale of their artwork, establishing an artist resale royalty (ARR) scheme aligns with the Government's priorities to support New Zealanders through the **current** difficult economic conditions.
- 3 An ARR scheme must be in place by 31 May 2025 under the New Zealand–United Kingdom Free Trade Agreement (NZ-UK FTA).

Executive Summary

- 4 The *Resale Right for Visual Artists Bill* (the Bill) has been introduced to establish an ARR scheme in New Zealand, which would create a right for visual artists (or their successors) to be paid a royalty when their artwork is resold. The Bill includes regulation making powers (see paragraph 9).
- 5 I have developed final policy proposals for supporting regulations for the Bill, informed by public consultation which took place in April-May 2023.
- 6 I am seeking agreement to these policy proposals and approval to submit drafting instructions for the supporting regulations to PCO.
- 7 Once drafted, I will seek Cabinet's approval to submit the regulations to the Executive Council. I expect this to happen in late 2023. The collection agency will then need to be appointed and the systems and processes put in place to run the scheme. The Bill requires the scheme to commence by Order in Council by 1 December 2024.

Background

- 8 In August 2022, Cabinet agreed to introduce an ARR scheme through standalone legislation [CAB-22-MIN-0316 refers]. The Bill, which establishes the primary framework for the scheme, is expected to complete the final stages (second reading, committee of the whole house and third reading) before the House rises on 31 August 2023.

- 9 Cabinet has agreed that supporting regulations will:
- 9.1 set the threshold at which the royalty applies;
 - 9.2 provide for the process by which the administrative fee deducted from each royalty payment is set;
 - 9.3 set out the role and functions of the collection agency; and
 - 9.4 provide for a cultural fund where declined royalties can be redirected to support artists' career sustainability [CAB-22-MIN-0316 refers].

Overview of the regulations development process to date

- 10 Draft proposals for regulations were developed in late 2022. Manatū Taonga worked with a General Advisory Group and a Māori advisory group (Te Rōpū Toi Māori) to develop these proposals. The groups provided a broad range of expertise and perspectives from artists, the secondary art market and other sector experts.
- 11 The proposals were also informed by research and modelling of the New Zealand art market, analysis of existing overseas artist resale royalty schemes, and similar domestic royalty distribution schemes.
- 12 On 11 April 2023, Cabinet agreed to publicly release the *Resale Right for Visual Artists Discussion Document* (the discussion document) on the proposals and noted my intention to provide Cabinet with final proposals for regulations in July 2023 [CAB-23-MIN-0122 refers].
- 13 Public consultation on the proposals ran from April-May 2023. This overlapped with the Select Committee receiving submissions on the Bill, allowing submitters to consider and comment on both together. There were twenty-two submitters on the regulations and a further five submitters made comments relevant to the regulations through the Select Committee process. A summary of submissions is attached as Appendix 1.
- 14 I am now seeking approval to submit drafting instructions to PCO on final regulations that take public submissions and further analysis by Manatū Taonga into account.

Proposed supporting regulations for the *Resale Right for Visual Artists Bill*

Royalty payment threshold

- 15 A resale royalty will only be payable on sales at or above a specified minimum threshold in value. The Bill requires this threshold to sit within the range of \$500–\$5,000, with the exact amount to be set through regulations.
- 16 I propose that the regulations set the minimum threshold at which a royalty will be payable at \$1,000 (excluding GST). The policy intent is to ensure a wide enough pool of artists receive royalties while keeping the administrative fees from the royalties collected high enough to offset collection and distribution costs. Manatū Taonga modelling indicates a \$1,000 threshold appropriately balances these outcomes.

Implications of setting the threshold above \$1,000

- 17 A threshold above \$1,000 would disadvantage emerging artists, who tend to make less money from sales. For example, a \$5,000 threshold (recommended by some submitters) would severely limit how many artists would receive royalties. In 2020, only 148 individual artists (18% of secondary art sales) would have been eligible for the scheme, compared to 369 artists (48% of sales) with a \$1,000 threshold. With a \$2,000 threshold, 275 artists (28% of sales) would have been eligible.
- 18 Further detail on why a low threshold is proposed is included in the Population Impacts section (see paragraph 77).

Implications of setting the threshold below \$1,000

- 19 A threshold below \$1,000 would provide minimal additional returns for artists, and the high volume of royalties to process could have financial impacts for the collection agency and compromise the scheme's integrity.
- 20 While a lower threshold such as \$500 or an opt-in for sales under the threshold¹ would benefit groups who are underrepresented in the secondary art market, the monetary benefit would be limited. In 2020 a \$500 threshold would have generated \$15,866 worth of extra royalties compared to a \$1,000 threshold (a 2.4% rise), while the collection agency would have processed 575 more sales (a 34.2% rise). For a \$500 sale, the artist would receive about \$12 to \$16 net after the administrative fee and tax.
- 21 In the long-term a threshold under \$1,000 could impact the scheme's sustainability or necessitate a much higher administrative fee, which would negatively impact all right holders and further diminish royalty payments on works sold for under \$1,000.

Administrative fee

- 22 The Bill provides for the collection agency to deduct a specified percentage of the royalty as an administrative fee towards carrying out its functions under the scheme. The percentage is to be set in regulations. The Bill also provides for the Minister to review the fee percentage at their discretion, in consultation with the collection agency, to ensure it continues to cover the costs of the scheme and nothing else.
- 23 I propose that the regulations set the administrative fee at 20% of the resale royalty (including GST)². Based on current market data, this is the approximate level needed for the scheme to eventually become self-sustaining, which is a key objective of the policy. Routine fluctuations in the art market mean exactly when the scheme will become self-sustaining is unpredictable. Engagement suggests a higher fee would be unpopular with right holders, as it would reduce royalty payments. Submitters generally considered a 20% fee fair and balanced.

¹The Ministry for Women recommended an opt-in provision for sales below the threshold in recognition that women are underrepresented in sales figures above \$1,000.

² The collection agency would be charged GST on the administrative fee.

Appointment of the collection agency

- 24 The Bill provides that the Minister may appoint the collection agency by notice in the *New Zealand Gazette* and enables regulations to outline what the Minister must consider or be satisfied of when appointing an organisation as the collection agency.
- 25 The Bill also requires that in carrying out its functions and duties under the Act the collection agency must:
- 25.1 acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists;
 - 25.2 be inclusive of, and recognise the different needs of, all peoples in New Zealand.
- 26 I propose that regulations require the Minister to be satisfied that the prospective collection agency has the capability to meet these requirements before making an appointment.
- 27 This will empower the Minister to assess important aspects of the collection agency's operation to ensure it can deliver these obligations. For example the Minister could consider:
- 27.1 Māori representation in the prospective collection agency's governance and management structure;
 - 27.2 staff capability to deliver an effective service to and appropriately engage with Māori artists;
 - 27.3 what if any established relationships the agency has with Māori artists and communities;
 - 27.4 how a Te Ao Māori worldview is reflected in the agency's strategies and/or business model; and
 - 27.5 the collection agency's ability to provide accessible information about the scheme.

Collection, holding and distribution of the resale royalty

- 28 The Bill:
- 28.1 enables regulations to specify the rules relating to how the collection agency will collect, hold and distribute royalties;
 - 28.2 requires parties to provide the collection agency with information about qualifying resales so royalties can be collected; and
 - 28.3 provides for regulations to set the manner in which, and timeframes within which, royalties must be paid to the collection agency.

- 29 I propose that regulations:
- 29.1 include timeframes for when the art market professional³ must provide information on the sale and pay the royalty to the collection agency; and
 - 29.2 require the collection agency to have a publicly available royalty distribution policy (Appendix 2 details what this would need to include).
- 30 Additional and more specific detail on the collection agency's responsibilities (for example, further information to be included in the royalty distribution policy relating to private sales, international sales, or complaints) would be included in the contract between Manatū Taonga and the collection agency.

Cultural fund

- 31 The Bill outlines that regulations may provide for declined and unclaimed⁴ royalties to be used to support the career sustainability of the wider visual arts community.
- 32 I propose that regulations enable the collection agency to establish and operate a cultural fund that would be used for this purpose. I anticipate this will take at least 12 months to accumulate enough funds to be viable.
- 33 The cultural fund will provide for declined and unclaimed royalties to be used for the benefit of visual artists beyond right holders, such as emerging artists and other parts of the visual arts community that might otherwise not benefit from the scheme. For example, funds could be distributed through grants, scholarships, or residencies.
- 34 The regulations will keep the cultural fund's purpose broad so it is flexible and future-proofed, with the collection agency being required to determine what it is used for in consultation with right holders and the wider artistic community (see paragraphs 45-48). Engagement and available data suggest that in the New Zealand context, Māori, women, Pacific, and disabled artists, and artists from ethnic minority communities, may receive less income from royalty payments than other groups. Requiring broad consultation on the design of the fund will help ensure artists from these groups benefit from the scheme through the fund.

Declined and unclaimed royalties

- 35 The Bill enables right holders to decline royalties. Also, in some cases royalties may not be able to be distributed (unclaimed royalties), for example where the right holder cannot be contacted or is unresponsive to efforts by the collection agency to distribute the royalty. The Bill enables regulations to specify rules for how declined and unclaimed royalties are used or managed⁵.

Process and timeframes for dealing with declined royalties

³ The Bill defines an art market professional as an auctioneer, art dealer, art consultant, owner or operator of an art gallery dealing in visual artworks, or any other person in the business of dealing in visual artworks.

⁴ While Cabinet originally only agreed that declined royalties would be transferred to the cultural fund, the Social Services and Community Committee has since agreed to amend the Bill to also enable unclaimed royalties to be transferred.

⁵ An administrative fee would still be deducted even in situations where the artist has declined to receive the royalty or the artist cannot be found.

- 36 I propose that regulations include the process, timeframes and information requirements for dealing with declined royalties.
- 37 For example, regulations will set out how right holders give notice to the collection agency that they do not want to receive a particular royalty or future royalties, and how they may rescind that notice.
- 38 The Bill requires the collection agency to use its best endeavours to locate right holders. If the collection agency cannot locate a right holder, I propose regulations require the agency to retain unclaimed royalties for six years, after which it must use that royalty in the manner specified below (see paragraphs 42-44).
- 39 The discussion document originally proposed that unclaimed royalties would be claimable indefinitely, in line with the recommendation of Te Rōpū Toi Māori who considered that imposing a time limit on claiming the royalty would be inconsistent with a te ao Māori world view.
- 40 However, some submitters, the Ministry of Business, Innovation and Employment (MBIE), and the Treasury raised concerns about this option. This included that it could reduce the benefits of the cultural fund as the collection agency would need to retain a portion of every royalty to protect against future liability, and this would accumulate into a large sum of lost revenue over time. There was also a concern raised about the perception of financial liability stemming from having to hold royalties indefinitely, acting as a deterrent to potential collection agencies wanting to administer the scheme, and administrative challenges, particularly around the calculation of interest on royalties.
- 41 Requiring royalties to be retained for six years aligns practice with the UK and Australian schemes. This will provide an important reference for implementing the scheme and make reciprocal arrangements with these countries' ARR schemes easier to administer.

How declined and unclaimed royalties are used

- 42 The Bill sets parameters around what regulations may empower the collection agency to do with declined and unclaimed royalties, including transferring them into the cultural fund, returning them to the liable parties who paid the royalty, or using them to meet the administrative costs of the scheme. However, it does not set out a process or full hierarchy for which option should be taken.
- 43 I propose that the regulations:
- 43.1 require declined and unclaimed royalties to be transferred into the cultural fund;
 - 43.2 if there is no cultural fund, require declined and unclaimed royalties to be returned to the liable parties who paid the royalties;
 - 43.3 if there is no cultural fund and liable parties cannot be found, require the collection agency to retain undistributed royalties to fund the costs of administering the scheme.

- 44 Although not as impactful as holding unclaimed royalties indefinitely, waiting for six years before transferring all unclaimed royalties into the cultural fund would create a delay before that money can be used to benefit artists. However, experience from overseas schemes indicates there will always be a significant portion of royalties that remain unclaimed after six years, meaning the collection agency can safely transfer a portion of unclaimed royalties to the cultural fund before the six-year timeframe has expired, providing it retains a portion to cover its liability. The collection agency will be best placed to determine what this amount is.

Engagement with scheme participants

- 45 The Bill empowers regulations to specify the rules of the operation of the collection agency, including how right holders are to be represented in its management.
- 46 I propose that regulations:
- 46.1 require the collection agency to ensure that participants in the scheme are informed of key decisions and to seek feedback on any significant changes to the scheme's operation;
 - 46.2 require the collection agency to determine, in consultation with right holders and the wider artistic community, the structure and purpose of the cultural fund, and review this periodically; and
 - 46.3 require the collection agency to engage with Māori before making key decisions or significant changes to the scheme, including when determining the structure and purpose of the cultural fund.
- 47 The Bill requires the collection agency to 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. Submitters commented that regulations should support the collection agency to meet these obligations. The provision requiring the collection agency to engage with Māori before making key decisions or significant changes to the scheme seeks to respond to this feedback.
- 48 The collection agency's performance in meeting these requirements will be assessed through monitoring. Further detail would be included in the collection agency's contract for services, for example, how stakeholders would be engaged and informed.

Record-keeping and monitoring

- 49 The Bill requires Manatū Taonga to monitor and report on the collection agency's performance in the manner required by regulations.
- 50 The Bill also enables the regulations to specify the rules in relation to:
- 50.1 what financial records are kept and how they are to be disclosed, including for monitoring purposes;
 - 50.2 what information relating to resale rights is to be collected and retained, and how it is to be disclosed for monitoring purposes; and

- 50.3 what records are to be kept by the collection agency, and how they are to be kept and made available.
- 51 I propose that the regulations require the collection agency to keep, and provide to the monitoring agency:
- 51.1 financial records of resale royalty transactions and the financial position of the scheme;
 - 51.2 records of how the scheme is impacting artists, including the specific impacts on Māori artists and Pacific artists; and
 - 51.3 records of how it is engaging with Māori before making key decisions or significant changes to the scheme.
- 52 Consultation with Māori artists and Pacific artists showed significant demand for specific demographic data to be collected. While regulations would not require specific records to be kept relating to other populations, the collection agency could still gather other demographic data. I will seek to ensure as much demographic data (for example, data on gender, disabled artists, and other ethnic groups) is collected as is feasible through operational settings, and this matter will be considered in the five-year review of the scheme.
- 53 Reporting will enable the collection agency and Manatū Taonga to identify any emerging problems or opportunities and inform decision-making around the scheme. It will also enable assessment of how the scheme is impacting Māori artists and Pacific artists and of any inequities in the scheme's operation.
- 54 Assessment of the scheme's impacts will also be informed by Manatū Taonga's regular engagement with the visual arts sector.
- 55 The collection agency will be subject to the Privacy Act 2020, and artists' personal information collected for monitoring and reporting purposes will need to be managed accordingly, including in the case of a change in collection agency.

Complaints

- 56 The Bill makes the collection agency subject to the Ombudsmen Act 1975 in relation to its functions in the Bill.
- 57 I propose that the regulations will require the collection agency to have, if it does not already, a formal complaints process that is appropriate for resolving complaints against the collection agency.
- 58 Stipulating a complaints process in the regulations means that any concerns raised relating to the role of the collection agency under the Act can be addressed through a fair process involving all affected parties. If participants are unhappy with the outcome of the complaints process, as per the Bill, unresolved complaints can be escalated to the Ombudsman and then the courts if necessary, adding further layers of accountability.

Operational settings

- 59 Submitters suggested various ways the collection agency could engage with participants in the scheme in practice, including ways to enable effective engagement with Māori. Many of these suggestions are more appropriately addressed through the operational settings of the scheme, rather than regulations. These submissions will be considered in preparing for the scheme to be implemented.
- 60 These operational settings, alongside settings relating to the appointments process of the collection agency, will be an important vehicle to enable effective engagement with Māori on the scheme and uphold the collection agency’s obligations under the Bill. Manatū Taonga plans to engage with Te Rōpū Toi Māori to further inform the design of the scheme’s operational settings.
- 61 A review will be conducted within five years of the scheme’s commencement (earlier if the scheme is not delivering to its policy objectives) to determine if any changes are needed to improve efficiency and effectiveness. This will be an operational matter, conducted by Manatū Taonga and informed by engagement with scheme participants.

Implementation

62 Table 1 below details timeframes for bringing the regulations into force.

Milestone/Activity	Timeframe
Drafting instructions provided to PCO	August 2023
Expected Royal Assent for the <i>Resale Right for Visual Artists Bill</i>	August 2023
PCO drafts regulations	August-October 2023
Cabinet approval to submit regulations to the Executive Council	Late 2023
Regulations made by Order in Council and notified in the <i>Gazette</i>	Late 2023
Appointment process for the collection agency	2024
Collection agency implements scheme systems and processes	2024
Legislation commences via Order in Council	By 1 December 2024
Scheme must be in force under the terms of the NZ-UK FTA	31 May 2025

Cost-of-living Implications

63 These proposals will not have significant adverse impacts on the cost of living. Through establishing a low threshold sale price and providing for the establishment of a cultural fund to support artists’ career sustainability, the regulations seek to financially benefit visual artists earning low incomes from their work.

Te Tiriti o Waitangi Implications

- 64 The Bill requires the collection agency to “acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists” in carrying out its functions under the Bill.
- 65 To give effect to this, regulations will require the Minister to be satisfied that the collection agency can uphold this obligation before making an appointment (see paragraphs 24-27). Additionally, the collection agency would be required to engage with Māori before making significant changes to the scheme (see paragraphs 45-48).
- 66 The discussion document proposed an indefinite holding period for unclaimed royalties as a means of recognising the ongoing relationship between Toi Māori practitioners and their work. However, this has not been progressed due to the reasons outlined in paragraphs 39-41.
- 67 In line with Article 3 of Te Tiriti (ōritetanga), the regulatory proposals seek to ensure the scheme is responsive to the needs of Māori artists and to ensure they receive the same benefits from the scheme as other New Zealanders through specific record-keeping and monitoring of the collection agency (see paragraphs 49-55).

Financial Implications

- 68 The scheme is intended to eventually be self-sustaining through the administrative fee. Establishment funding of \$0.954 million over four years has been provided through Budget 2023 to meet the scheme’s setup and early operating costs. This does not include funding to administer the cultural fund.
- 69 A 20% administrative fee, which was included in the discussion document, is still viable with current funding. However, Manatū Taonga modelling suggests the scheme will take longer to become self-sustaining, meaning further Crown funding is likely to be needed in future.
- 70 For the first three years of the scheme, the collection agency will have the dual revenue streams of its establishment funding and revenue from the administrative fee. This should help the collection agency cover any additional costs. However, it will also limit its ability to use administrative fees collected during this period to build a buffer to cover future income fluctuations, increasing the likelihood that further Crown funding or a higher administrative fee percentage is needed to support the scheme in outyears.
- 71 Manatū Taonga will need to fund monitoring of the scheme from its baseline.

Legislative Implications

- 72 These proposals will be given effect through regulations (secondary legislation).
- 73 Regulations will support the implementation of the *Resale Right for Visual Artists Bill*, which holds a category 2 priority on the 2023 Legislation Programme (must be passed before the 2023 general election).

Impact Analysis

Regulatory Impact Statement

- 74 A Regulatory Impact Statement has been completed and is attached as Appendix 3.
- 75 A RIA Quality Assurance Panel at Manatū Taonga has reviewed the Regulatory Impact Statement Resale Right for Visual Artists Regulations and considers it meets the quality assurance criteria. The RIS presents a cohesive set of preferred options for regulations governing the resale right for visual artists.
- 76 Because of acknowledged limitations around market data and volatility and available funding, and because the scheme will be supported by contractual arrangements that have not yet been entered into, regulations need to provide flexibility to manage contingent outcomes. The challenge of fully differentiating the impacts of options in this context means some areas of analysis are more comprehensive and convincing than others. Implementation and monitoring plans are clear, and will be especially important to ensure the scheme works as intended. The consultation undertaken since the interim RIS has supported refinements to the analysis, which provides confidence in this RIS's conclusions.

Climate Implications of Policy Assessment

- 77 A climate implication assessment is not required.

Population Implications

- 78 Table 1 below outlines the population implications of the proposals. Note that ethnicity is not commonly collected on available sales data, limiting the quality of evidence to inform population impacts analysis.

Population group	How the proposal may affect this group
Māori	<p>Employment data, however, indicates that around 12.3% of visual artists are Māori, compared to 13% of the working age population. Feedback from Māori artists indicates that Māori art is often sold online and directly in a primary sale, and that many Māori artists are not promoted by dealer galleries or public galleries.</p> <p>Analysis of 2018-21 auction house sales data indicates that about 10% of works by living artists sold for over \$1000 were by Māori artists. Provisions in the Bill such as an opt-in for private sales (where more Māori artists sell their work) should mean the scheme benefits a higher proportion of Māori artists.</p> <p>Regulations will require the collection agency to keep records of the scheme's impacts on Māori and provide these to the monitoring agency. This will provide evidence to inform changes to the scheme if disparities are evident.</p>
Pacific peoples	<p>Creative New Zealand (CNZ) data indicates that of 177 applications from individual visual artists for CNZ grant funding, 11 (6%) were from Pacific artists. About 4,000 Pacific artists were employed in the arts and creative sector in 2018, or 4% of the sector.</p> <p>Engagement and available data indicate Pacific artists are more likely to sell or gift their works online and directly in primary sales, rather than use dealer galleries or auction houses. Engagement with Pacific artists also suggests there</p>

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	<p>is a lack of knowledge of Pacific art forms among New Zealand art market professionals. In some circumstances Pacific art sold on the secondary market may therefore be undervalued, with knock-on effects for royalty payments.</p> <p>Regulations will require the collection agency to keep records of the scheme's impacts on Pacific artists and provide these to the monitoring agency. This will provide evidence so, where possible, the scheme can be adapted to counter the undervaluing of Pacific artists' work. The collection agency can also support art market professionals to better understand the value of these works.</p>
Women	<p>Of the visual artists selling works for over \$1,000 between 2019-21 in New Zealand, 38% were women and 62% were men. Women's art may also be more likely to be sold outside of dealer galleries or auction houses.</p> <p>To mitigate this disparity, the Ministry for Women proposed an opt-in provision to the scheme for galleries selling work under the \$1,000 threshold and that other sales platforms such as TradeMe be included. The Bill includes a voluntary opt-in provision for private sales but private sales will also be subject to the \$1,000 threshold. The proposed threshold is as low as is feasible to maximise inclusivity but not compromise the scheme's integrity.</p>
Seniors	<p>Many successful New Zealand artists are seniors. Between 2019 and 2021, 54.8% of auction house visual art sales above \$1,000 were created by those aged 65 and over, while this group made up 15.6% of the population⁶. It is therefore expected that seniors will receive a large proportion of royalties.</p>
Disabled people	<p>Engagement suggests works by disabled artists are rarely resold for over \$1,000. However, lowering the threshold to account for this could have unintended consequences for disabled artists. Arts Access Aotearoa have advised that a lower threshold could cause sellers of works by disabled artists to conclude it is not worth selling work due to the additional administrative costs and requirements of the scheme, which would impact an already small market for disabled artists' art. Additionally, royalty payments on works resold for under \$1,000 would be relatively small. More generally, Whaikaha Ministry of Disabled People has noted anecdotal evidence that disabled people may be more likely to pursue self-employed careers in art as they can work to their own pace, health and comfort. Consequently, a threshold that captures a significant proportion of sales, as a \$1,000 would, is important for disabled artists.</p> <p>The Bill requires the collection agency to administer royalties in a way that is inclusive of, and recognises the different needs of, all peoples in New Zealand. It is anticipated that in practice this will include providing information about the scheme that is accessible to disabled artists and I will seek to ensure this through operational settings.</p> <p>While regulations will require information to be gathered on the scheme's impacts on artists, sample sizes are likely to limit the usefulness of this information to improve outcomes for disabled artists.</p>
Other ethnic communities	<p>No data is currently available on the number or proportion of Asian, Middle Eastern, Latin American and African artists selling works in New Zealand.</p> <p>2017 CNZ research found that a lack of funding to create and exhibit work, and a lack of representative sector organisations, were significant barriers for Asian artists living in Auckland. These barriers could limit the number of works available on the secondary art market and the ability of Asian artists to build their profile to increase the resale value of their art. Engagement also suggests that Middle Eastern, Latin American, and African artists face barriers to creating and exhibiting work in New Zealand, which may limit their ability to sell work on the primary art market and therefore to receive resale royalties.</p> <p>While regulations will provide for information to be gathered on the scheme's</p>

⁶ Resident population estimates as of June 2020 (Stats NZ).

	impacts on artists, sample sizes are likely to limit the usefulness of this information to improve outcomes for artists from ethnic communities.
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Human Rights

- 79 The proposals in this Cabinet paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of External Resources

- 80 Two advisory groups (the General Advisory Group and Te Rōpū Toi Māori), comprising both artists and art market professionals, were consulted on the development of proposals for supporting regulations. Both were remunerated as Group 4 bodies under the Cabinet Fees Framework. The total expenditure across both groups was \$22,185.
- 81 These groups were convened to provide the perspective of a range of different actors in, and experts on, the secondary art market, including experts in Toi Māori from across the sector.
- 82 I expect engagement to continue with Te Rōpū Toi Māori on operational settings for the scheme, particularly to ensure that the setup of the collection agency, how it is monitored, and the management of the cultural fund reflects the expectations of Toi Māori practitioners as far as possible.

Consultation

- 83 The following government agencies and Crown entities have been consulted: the Ministries of Business, Innovation and Employment, Foreign Affairs and Trade, Justice, and Social Development; the Ministries for Women, Pacific Peoples and Ethnic Communities; Whaikaha Ministry of Disabled People, the Department of Internal Affairs, Inland Revenue, Te Puni Kōkiri, Te Arawhiti, the Treasury, Accident Compensation Corporation, the Office of the Privacy Commissioner, the Parliamentary Counsel Office, the Public Service Commission, the Office of the Ombudsman, and the Department of the Prime Minister and Cabinet.
- 84 Public consultation was undertaken on proposals for regulations in April-May 2023.

Communications

- 85 Subject to Cabinet decisions, Manatū Taonga will undertake proactive communication with the advisory groups involved in policy development to explain the final policy decisions and any differences from their original recommendations. I will undertake broader public communication after the final regulations are drafted and approved.

Proactive Release

- 86 This paper will be proactively released, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Arts, Culture and Heritage recommends that the Committee:

Progress on development of policy proposals for regulations

- 1 **note** that in April 2023, Cabinet agreed to release a discussion document for public consultation on supporting regulations for the *Resale Right for Visual Artists Bill* and that at that time, the Minister committed to return to the Committee in July with final proposals for the regulations [CAB-23-MIN-0122 refers];
- 2 **note** that public consultation has been completed and further analysis conducted to inform final proposals for supporting regulations;

Royalty payment threshold

- 3 **agree** the regulations will set the minimum threshold at which a royalty will be payable at \$1,000;

Administrative fee

- 4 **agree** the regulations will set the administrative fee at 20% of the resale royalty;

Appointment of the collection agency

- 5 **agree** the regulations will require the Minister to be satisfied that the prospective collection agency has the capability to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists, before making their decision on the appointment of the collection agency;
- 6 **agree** the regulations will require the Minister to be satisfied that the prospective collection agency has the capability to be inclusive of, and recognise the different needs of, all peoples in New Zealand before making a decision on the appointment of the agency;

Collection, holding and distribution of the resale royalty

- 7 **agree** the regulations will include timeframes for when the art market professional must provide information on the sale and pay the royalty to the collection agency;
- 8 **agree** the regulations will require the collection agency to have a publicly available royalty distribution policy;

Cultural fund

- 9 **agree** the regulations will enable the collection agency to establish and operate a cultural fund that would be used to support the career sustainability of the wider artistic community;

Declined and unclaimed royalties

- 10 **agree** the regulations will set out a process and timeframes for dealing with declined and unclaimed royalties;
- 11 **agree** the regulations will enable the collection agency to transfer declined and unclaimed royalties into the cultural fund;
- 12 **agree** the regulations will require the collection agency to hold unclaimed royalties for six years;
- 13 **agree** the regulations will require that if there is no cultural fund, declined or unclaimed royalties will be returned to the liable parties who paid the royalties;
- 14 **agree** the regulations will require that if there is no cultural fund and the liable parties cannot be found, then the collection agency will retain the declined or unclaimed royalties to fund the costs of administering the scheme;

Engagement with scheme participants

- 15 **agree** the regulations will require the collection agency to ensure that participants in the scheme are informed of key decisions and to seek feedback on any significant changes to the scheme's operation;
- 16 **agree** the regulations will require the collection agency to determine, in consultation with right holders and the wider artistic community, the structure and purpose of the cultural fund, and review this periodically;
- 17 **agree** the regulations will require the collection agency to engage with Māori before making key decisions or significant changes to the operation of the scheme, including when determining the structure and purpose of the cultural fund;

Record-keeping and monitoring

- 18 **agree** the regulations will require the collection agency to keep financial records of resale royalty transactions and the financial position of the scheme, and that these records must be provided to the monitoring agency;
- 19 **agree** the regulations will require the collection agency to keep records of how the scheme is impacting artists, including the specific impacts on Māori artists and Pacific artists, and that these records must be provided to the monitoring agency;
- 20 **agree** the regulations will require the collection agency to keep records of how it is engaging with Māori before making key decisions or significant changes to the scheme, and that these records must be provided to the monitoring agency;

Complaints

- 21 **agree** that the regulations will require the collection agency to have, if it does not already, a formal complaints process;

Next steps

- 22 **agree** to the Minister for Arts, Culture and Heritage issuing drafting instructions for the supporting regulations to the Parliamentary Counsel Office; and
- 23 **authorise** the Minister to take further decisions on minor and technical matters in line with the policy decisions agreed by Cabinet.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Arts, Culture and Heritage

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Appendices

Appendix 1: Summary of submissions on the Resale Right for Visual Artists Regulations

Appendix 2: Proposals for Resale Right for Visual Artists supporting regulations

Appendix 3: Regulatory Impact Statement

Appendix 4: Changes made to the regulations based on submissions

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Appendix 1: Summary of submissions of the Resale Right for Visual Artists Regulations

There were 27 submissions on the Resale Right for Visual Artists Regulation proposals. Submitters included artists, art market professionals, museums and galleries, creative organisations, overseas collections agencies and royalty collection peak bodies, New Zealand based royalty collection agencies and Crown Entities.

Twenty-two of these submissions were received through the public consultation on proposals for the regulations. The remaining five were submissions on the Bill that commented on aspects of the regulations.

Of the 22 submissions received through the public consultation process, the majority (18), commented on one or more of the specific proposals for the regulations. The remaining four either expressed general support, or opposition to the scheme.

Some proposals were more heavily supported than others. For example, of the 12 submitters that commented on the proposals for a cultural fund all supported the proposal. In contrast, of the 14 submitters that commented on the proposed \$1,000 minimum threshold for eligible works, 9 supported the threshold and 5 opposed the threshold.

Despite the variation across different proposals, all proposals presented for public consultation were supported by the majority of submitters.

Feedback in support of the proposals included that:

- the \$1,000 eligibility threshold is inclusive and will enable a wide range of visual artists to benefit from the scheme
- the proposed 20% administrative fee is fair and balanced
- the requirement for prospective collection agencies to demonstrate how they would include Māori in their governance and decision-making will help ensure the scheme is supportive of, and benefits Māori visual artists
- the proposal to allow rights holders to claim a royalty indefinitely is in line with a te ao Māori perspective, where tangata whenua never cede guardianship over taonga to ensure the preservation and protection of that taonga
- the proposed areas of reporting will be useful for considering changes and improvements to the scheme as it is implemented and evolves over time
- the explicit inclusion of Māori and Pacific statistics in the reporting will better quantify the impact of the scheme
- Manatū Taonga has the relevant sector expertise needed to monitor the scheme
- the proposed dispute resolution process is balanced and fair and a welcome alternative to legal action
- the proposed cultural fund recognises and supports the aims of the scheme and could provide valuable support for emerging artists.

Feedback which expressed concern about the proposals included that:

- the \$1,000 threshold is too low and may dissuade collectors from buying visual artworks, as low value artworks on the secondary market frequently incur a loss when sold

- the administrative fee should be a fixed fee and not a percentage, as it does not cost more to collect and distribute a royalty on higher value works
- the proposal to allow rights holders to claim the royalty indefinitely would create significant, increasing financial liability for the collection agency overtime and would limit the benefits of the cultural fund
- it may be difficult to provide accurate data on artists' ethnicity
- there shouldn't be a special focus on Māori and Pacific visual artists
- disputes in relation to the resale scheme are not necessarily amendable to mediation and the cost of mediation could be prohibitive for some artists
- it is important that regulations made under the Bill do not create precedents or unrealistic expectations when the Copyright Act is reviewed
- the costs of administering a cultural fund are significant and this should be considered when considering the collection agency's funding.

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Appendix 2: Final policy proposals for the Resale Right for Visual Artists Regulations

	Proposals for regulations
Royalty Threshold	<i>The Bill specifies that the royalty threshold must sit within \$500-\$5,000 and that the exact amount will be set through regulations.</i>
	<p>We propose the regulations:</p> <p>Set the minimum threshold at which a royalty will be payable at \$1,000.</p>
Administrative Fee	<i>The Bill provides for the collection agency to deduct a specified percentage of the royalty as an administrative fee in exchange for services and requires the fee amount to be set in regulations.</i>
	<p>We propose the regulations:</p> <p>Set the administrative fee at 20% of the resale royalty.</p>
Appointment of collection agency	<i>The Bill provides that the Minister may appoint the collection agency by notice in the New Zealand Gazette. It provides that before appointing a person as the collection agency, the Minister must be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions of the collection agency under the Act and must consider any other matters specified in the regulations.</i>
	<p>We propose the regulations:</p> <p>Require that before making a decision on the appointment of the collection agency the Minister must be satisfied that the prospective collection agency can:</p> <ul style="list-style-type: none"> • acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists • be inclusive of, and recognise the different needs of, all peoples in New Zealand.
Collection and distribution of royalties	<i>The Bill enables regulations to specify the rules for the operation of the collection agency, including rules in relation to how resale royalties are to be collected, held and distributed. The Bill also sets out requirements for parties to provide the collection agency with information about qualifying resales to enable the collection of royalties. This information must be provided in the manner and within the timeframes specified by the regulations.</i>

We propose the regulations:

- require that the information provided by the art market professional to the collection agency must be provided in writing and within 60 days of the completion of the sale
- require payment of the royalty amount to the collection agency within 60 days of the completion of the sale
- require the collection agency to use its best endeavours to locate the rights holder or holders
- require the collection agency to distribute the royalty to the rights holder or holders in a timely manner, less the collection agency's administrative fee.

Royalty distribution policy

We propose regulations require the collection agency to develop a publicly-available royalty distribution policy. We propose regulations require the distribution policy to include information on:

- how the royalty will be collected and distributed (including the timeframe within which royalties will be paid to rights holders)
- how funds will be held prior to payment
- the collection agency's privacy policy in relation to resale royalties.

If a rights holder should have received a royalty but a royalty was not collected

We propose the regulations enable a right holder to notify the agency within six years of the completion of the sale that they should have received a resale royalty, with enough information provided for the agency to determine whether a royalty should be collected. Information would need to include:

- proof they are the right holder
- evidence that the resale is eligible for a royalty
- who is responsible for paying the royalty.

If the collection agency can't contact a rights holder:

Regulations would provide that:

- if the collection agency cannot contact a rights holder, the royalty would be retained by the collection agency but would be made available to be distributed to the rights holder if they were identified within six years.

If the collection agency pays a royalty in error:

We propose the regulations:

	<ul style="list-style-type: none"> provide that if the collection agency collects a royalty when no royalty is due, the agency would return the full amount to the person(s) who paid the royalty.
Cultural fund	<p><i>The Bill outlines that regulations may provide for declined and unclaimed royalties to be used to support the career sustainability of the wider visual artistic community.</i></p>
	<p>We propose the regulations:</p> <ul style="list-style-type: none"> enable the collection agency to do this by establishing and operating a cultural fund that would be used to support the career sustainability of the wider artistic community.
Declined and unclaimed royalties	<p><i>The Bill enables rights holders to decline royalties and provides for regulations to specify rules relating to how resale royalties that are not distributed (e.g. declined or unclaimed royalties) are to be used or managed. The Bill also sets out parameters around what regulations may empower the collection agency to do with declined and unclaimed royalties.</i></p>
	<p>We propose the regulations:</p> <ul style="list-style-type: none"> 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 allow for a written notice declining future royalties to be rescinded at any time by the rights holder outline that declined and unclaimed royalties would be used in the manner specified in the regulations and that an administrative fee would still be deducted from declined and unclaimed royalties provide for declined and unclaimed royalties to be transferred into the cultural fund if there is no cultural fund, declined and unclaimed royalties would be returned to the liable parties who paid the royalties if there is no cultural fund and the liable parties cannot be found, the collection agency would retain the undistributed royalties to fund the costs of administering the scheme require that if the collection agency cannot locate a right holder, the royalty must be retained for six years after which the agency must use that royalty in the manner specified in the regulations

Engagement with participants in the scheme	<p><i>The Bill enables regulations to specify the rules of the operation of the collection agency, including how right holders are to be represented in the management of the collection agency.</i></p> <hr/> <p>We propose the regulations:</p> <ul style="list-style-type: none"> • require the collection agency to seek feedback from participants in the scheme, including rights holders and art market professionals before making any significant changes to the scheme’s operation • 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 • require the collection agency to determine, in consultation with rights holders and the wider artistic community, the structure and purpose of the cultural fund, and review this periodically • require the collection agency to engage with Māori before making key decisions or significant changes to the operation of the scheme, including when determining the structure and purpose of the cultural fund • 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.
Record-keeping and monitoring	<p><i>The Bill enables the regulations to specify the rules of operation of the collection agency, including in relation to:</i></p> <ol style="list-style-type: none"> <i>a. what financial records are kept and how they are to be disclosed, including for monitoring purposes</i> <i>b. what information relating to resale rights is to be collected and retained, and how it is to be disclosed for monitoring purposes</i> <i>c. what records are to be kept by the collection agency and how they are to be kept and made available.</i> <p><i>The Bill outlines that Manatū Taonga must monitor and report on the performance of the collection agency in the manner required by the regulations.</i></p> <hr/> <p>We propose regulations require the collection agency to keep financial records of resale royalty transactions and the financial position of the scheme, including:</p> <ul style="list-style-type: none"> • operating expenses • administrative fees collected • transactions of artworks that require a royalty

	<ul style="list-style-type: none"> • royalties collected and distributed • payments made to the cultural fund. <p>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 records of:</p> <ul style="list-style-type: none"> • how many Māori and Pacific artists received a royalty and the value of those royalties • how the collection agency is engaging with Māori before making key decisions or significant changes to the operation of the scheme • 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 unclaimed royalties • any royalties paid into the cultural fund and how the cultural fund is being operated to benefit artists • compliance with the scheme, including any complaints raised and how they have been resolved, and any enforcement action taken by the collection agency • Māori and Pacific artists' use of the complaints process and any enforcement action taken on behalf of Māori and Pacific artists. <p>Regulations would require the collection agency to:</p> <ul style="list-style-type: none"> • ensure rights holders have reasonable access to copies of these records outlined above • provide these records to the monitoring agency • publish these records annually, with any personal or commercially sensitive information redacted.
Complaints process	<p><i>The Bill enables the regulations to specify the rules of operation of the collection agency, including rules in relation to any other matter that relates to the role of the collection agency under the Act.</i></p> <p>We propose regulations require: the collection agency to have a formal complaints process if it doesn't already.</p>

**Regulatory Impact Statement
Resale Right for Visual Artists
Regulations**

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Regulatory Impact Statement: Final regulations for Resale Right for Visual Artists Bill

Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced to inform Cabinet policy decisions on the Resale Right for Visual Artists regulations following public consultation.</i>
Advising agencies:	<i>Manatū Taonga Ministry for Culture and Heritage</i>
Proposing Ministers:	<i>Minister for Arts, Culture and Heritage</i>
Date finalised:	<i>10 August 2023</i>
Problem Definition	
<p>Aotearoa New Zealand is introducing a resale royalty right for visual artists, which will introduce a royalty payment to visual artists when their art is sold on the secondary market. While other creative professionals generally derive copyright income from multiple reproductions or repeat performance of their works, the current absence of a resale right means that visual artists' primary income is largely limited to the one-off initial sale of their individual works on the primary art market. The right addresses this inconsistency across the creative sector.</p> <p>The right will also meet a commitment under the recently-activated Free Trade Agreement (FTA) between the United Kingdom (UK) and Aotearoa New Zealand to introduce such a scheme within two years of the FTA's entry into force. A Bill has been introduced that would establish an artist resale royalty (ARR) scheme.</p> <p>This Regulatory Impact Statement (RIS) has been developed to support analysis of the final policy regulations informed by public consultation on the regulations discussion document and submissions to the Social Services and Community Committee on the Resale Right for Visual Artists Bill. The Bill includes powers to make regulations that:</p> <ul style="list-style-type: none">a. set the threshold at which the royalty appliesb. set the percentage which would be deducted from each royalty payment to cover the administrative costs of the collection agencyc. set out the role and functions of the collection agencyd. provide for how undistributed royalties are managed. <p>The key objectives are to produce an ARR scheme that maximises the benefits to artists while minimising costs to art market professionals and participants; supports a well-functioning secondary art market; and is simple and cost-effective to administer, so that it can ultimately become self-sustaining.</p>	
Executive Summary	

Final Regulatory Impact Statement

This RIS follows an interim RIS to support proposals for public consultation, with this RIS updating the interim RIS following public consultation and further agency analysis. A full summary of submissions received during consultation is attached as **Appendix Three**.

Background

An artist resale royalty (ARR) scheme provides a right for visual artists (or their successors) to receive a royalty when their qualifying artwork is sold on the secondary art market. The Resale Right for Visual Artists Bill, which was introduced to the House in March 2023, would introduce an ARR scheme for Aotearoa New Zealand which requires a five percent royalty on the “hammer price”¹ of qualifying resales.

While the Bill establishes key elements of the ARR scheme, the Bill includes powers to make regulations that:

- a. set the threshold at which the royalty applies
- b. set the percentage which would be deducted from each royalty payment to cover the administrative costs of the collection agency
- c. set out the role and functions of the collection agency
- d. provide for how undistributed royalties are managed.

Table 1 below summarises the policy settings analysed in this RIS and the preferred options.

Table 1: Preferred options according to regulatory impact analysis

Policy setting	Preferred option
<i>Threshold sale price</i>	
Threshold sale price	The minimum threshold at which a royalty will be payable is set at \$1,000.
<i>Administrative fee</i>	
Percentage of the resale royalty deducted as an administrative fee	A 20% administrative fee is deducted from the resale royalty payment.
<i>Collection agency</i>	
Ensuring the collection agency can appropriately support Māori	Regulations require that the Minister must be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists when making a decision on the appointment of the agency.

¹ The “hammer price” is the sale price before any additions or deductions, or other charges, such as a buyer’s premium, commission or GST.

Addressing complaints and disputes that arise in the operation of the scheme	The regulations would require the collection agency to have a formal complaints process.
Reporting on how the scheme is impacting artists	In addition to general reporting on impacts on artists, the collection agency specifically records and reports on how the scheme is impacting Māori and Pacific artists. ²
<i>Undistributed royalties/cultural fund</i>	
Length of time a royalty will be claimable if the right holder cannot be located	The regulations will require royalty payments, where the right holder cannot be located, to be claimable for a fixed term of six years.
Establishment of cultural fund	Regulations enable the collection agency to establish and operate a cultural fund, with operation and detail of the fund to be managed by the collection agency.
Use of royalties that cannot be distributed	If the collection agency has not established a cultural fund to be used for the benefit of artists, undistributed royalties are returned to the liable party/ies or used for administrative costs if the liable parties cannot be found.

Impact of the preferred option

Compared to the counterfactual of the UK ARR scheme, costs and benefits under the preferred option are likely to include:

- a. more artists would receive royalties and a higher total value of royalties would be distributed due to the absence of a royalty cap and a lower threshold
- b. additional funds distributed to the wider artistic community should the collection agency establish a cultural fund
- c. marginally more tax revenue to the Crown through the taxation of royalty payments
- d. slightly higher administrative costs to art market professionals and the collection agency
- e. a smaller net royalty paid to artists due to a higher admin fee
- f. additional costs to the Crown should the collection agency establish a cultural fund.

Stakeholder interests and engagement

Available data and evidence from engagement suggests that artwork by some demographics tends to sell for lower prices, e.g. Māori, female, ethnic minority and

² Operational settings, such as the contract for the collection agency's services, would be used to ensure the collection agency collects as much demographic data as is feasible (such as disaggregated data on gender, ethnic minority artists and disabled artists).

disabled artists³. Alongside provisions in the Bill, the preferred options identified in this RIS to increase the benefit from the scheme for these groups include:

- a. the collection agency would be required to collect data and report on the scheme's impacts on artists, specifically including data on the impacts on Māori and Pacific artists
- b. the Minister must be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists, when making a decision on the appointment of the agency
- c. the ability to establish a cultural fund that could be used to promote equitability in the scheme.

In addition, to operate the regulations would require the Minister to be satisfied that the collection agency can fulfil the requirement in the Bill to be inclusive of, and recognise the different needs of, all peoples in New Zealand before appointing them.

Manatū Taonga worked with a General Advisory Group and a Māori Advisory Group (Te Rōpū Toi Māori) in the development of these proposals. Manatū Taonga and these advisory groups agreed on the overall scheme direction and most of the proposals to address key policy issues. Significant divergences in views are:

- a. Art market professional representatives in the General Advisory Group recommended a high threshold of at least \$2,000. The majority of the General Advisory Group agreed the threshold should be as low as possible, ideally \$500. Te Rōpū Toi Māori supported a \$1,000 threshold. The analysis in this RIS recommends a \$1,000 threshold. This is analysed in Section Two of Policy Area One.
- b. Te Rōpū Toi Māori recommended options to require Māori representation in the governance of the collection agency. The preferred option in this RIS is that the regulations require the Minister to be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists, before making a decision on the appointment of the collection agency. This is analysed in Section Two of Policy Area Three.
- c. Te Rōpū Toi Māori recommended that unclaimed royalties should be held for an indefinite period, while the General Advisory Group recommended that royalties be held for a fixed period. The preferred option in this RIS is that royalties are held for six years. This is analysed in Section Two of Policy Area Four.

A full breakdown of the advisory groups' recommendations and how they align with the options presented in this RIS is available as **Appendix Two**.

³ Further information on population implications is available as Appendix Two of the Cabinet paper on legislative policy proposals, available at https://mch.govt.nz/sites/default/files/projects/cab-22-MIN-0316-artist-resale-royalty-scheme-policy-approvals_1.pdf

Public consultation on regulations proposals was undertaken in April-May 2023. A summary of submissions is available as **Appendix Three**.

Limitations and Constraints on Analysis

The Bill empowers supporting regulations to address specific policy areas

The Resale Right for Visual Artists Bill provides for regulations to set policy in the four areas outlined in the problem definition above. Other key policy settings have been addressed in the Bill and are therefore out of scope.

The Bill also specifies that the collection agency will be a non-government organisation. Because of this the Crown is limited on how prescriptive it can be regarding governance of the collection agency.

There is uncertainty about future sales figures

2021 saw a significant increase in the overall value of secondary art sales in Aotearoa New Zealand. While we do not have access to art sale data from 2022, anecdotal evidence suggests 2022 also saw both a high number and high value of sales on the secondary market. It is not yet clear if this indicates lasting growth in the art market or if 2021 is an outlier.

In policy areas that would affect scheme revenue (the threshold sale price and options relating to the administrative fee), we have assumed that these sales figures will not be reflected on an ongoing basis as we are cautious of overestimating revenue generated, and therefore underestimating how much Crown investment would be required. If the value in sales seen in 2021 and 2022 is sustained over the next few years, this is likely to indicate an overall trend in art market growth rather than a one-off spike.

Funding limitations affect the viability of some options

Funding of \$954,000 over four years has been allocated through Budget 2023 to implement the scheme and fund its basic functions through its first four years of operation. The amount of funding available to support the scheme, both through the administrative fee and Budget 2023 funding, could limit what functions the collection agency can carry out.

The balance between an administrative fee percentage that is tolerable for artists and the goal of making the scheme self-sustaining also places constraints on what we can expect the collection agency to deliver.

The cultural fund options detailed below would require additional funding to operate. The exact amount would depend on whether the fund is contestable, which would drive much of the additional cost.

Establishing bespoke governance arrangements for the collection agency would require a much higher level of government funding than is included in budget proposals. The scheme is expected to generate approximately \$702,000 in royalties per annum and between \$131,550 and \$219,250 in admin fees, and compared to this the costs of establishing new governance are likely to be prohibitive.

Options related to the administrative fee have cost recovery implications. An assessment of these is attached as **Appendix One**.

There is limited information about the secondary art market

The Ministry's analysis is informed by auction house sales data (purchased from the Australian Art Sales Digest) which we estimate comprises approximately 80 percent of the secondary art market in Aotearoa New Zealand. We have little visibility of the remaining 20 percent. This means we have limited information about groups of artists whose work tends to sell through other means. Engagement suggests that this includes Māori and Pacific artists, as well as artists from ethnic communities who face barriers to creating and exhibiting work in Aotearoa New Zealand. Information about the scheme's impacts on artists is proposed to be gathered by the collection agency to inform future reviews of the scheme, including addressing distributional impacts.

The overall availability of data about the participation of specific demographics in the secondary art market is limited, so analysis of impacts on these demographics relies on anecdotal insights from engagement.

The analysis of this proposal is informed partly by insights and experiences from the implementation and operation of comparable overseas ARR schemes, including in Australia, the UK and EU nations. The Aotearoa New Zealand market is considerably smaller than many overseas markets and so may be impacted differently; we have not been able to identify an overseas country which has a similar sized art market to Aotearoa New Zealand, and which also has an ARR scheme (Ireland has a comparable population, but a larger art market). This limits what options can be considered; for example, the UK scheme has multiple collection agencies, which would not be sustainable in an art market the size of Aotearoa New Zealand's.

Overall impact on analysis

Overall, the Ministry has a reasonable degree of certainty that these limitations and constraints have not significantly impacted the analysis in this RIS. Further consultation has been undertaken, including public consultation on regulations proposals in April-May 2023 to inform policy development, as well as with government departments and overseas collection agencies. This consultation provides additional evidence to mitigate the limitations and constraints described above.

Responsible Manager(s) (completed by relevant manager)

Heather Raeburn
 Manager, Arts Policy
 Manatū Taonga Ministry for Culture and Heritage
 10 August 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Manatū Taonga Ministry for Culture and Heritage
Panel Assessment & Comment:	A RIA Quality Assurance Panel at Manatū Taonga has reviewed the Regulatory Impact Statement Resale Right for Visual Artists Regulations and considers it meets the quality assurance criteria. The RIS presents a cohesive set of preferred options for regulations governing the resale right for visual artists. Because of acknowledged limitations around market data and volatility and available funding, and because the scheme will be supported by contractual arrangements that have not yet been entered into, regulations need to provide flexibility to manage contingent

outcomes. The challenge of fully differentiating the impacts of options in this context means some areas of analysis are more comprehensive and convincing than others. Implementation and monitoring plans are clear, and will be especially important to ensure the scheme works as intended. The consultation undertaken since the interim RIS has supported refinements to the analysis, which provides confidence in this RIS's conclusions.

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Background

What is the context behind the policy problem / opportunity and how is the status quo expected to develop?

What is an artist resale royalty?

2. An ARR provides a financial return to artists whose work is on-sold. The right to a resale royalty is enshrined in the 1971 Berne Convention, to which Aotearoa New Zealand is a signatory, and enables visual artists to receive a royalty when their work is sold on the secondary art market.
3. While other creative professionals generally derive copyright income from multiple reproductions or repeat performance of their works, the current absence of a resale right means that visual artists' primary income is largely limited to the one-off initial sale of their individual works on the primary art market. ARR schemes work to address this by providing royalty payments to artists.

Why is Aotearoa New Zealand introducing an Artist Resale Royalty (ARR) scheme now?

4. The FTA between the UK and Aotearoa New Zealand (NZ-UK FTA), which was signed on 28 February 2022 and came into effect on 31 May 2023, commits Aotearoa New Zealand to introducing a reciprocal ARR scheme within two years of its entry into force (article 17.46 of the NZ-UK FTA)⁴. The FTA with the European Union (NZ-EU FTA), which is currently undergoing the treaty examination process, contains a similar commitment to establish an ARR scheme (article 18.14).
5. On 15 August 2022, Cabinet agreed to establish an ARR scheme in Aotearoa New Zealand and agreed to the drafting of new legislation to give effect to the scheme.
6. The Resale Right for Visual Artists Bill (the Bill) has now been introduced to Parliament. Once it is passed into law, the Bill will establish a new standalone Act. Policy settings in the Bill have been assessed in a separate RIS.

What policy problem / opportunity does the ARR scheme as a whole aim to address?

The policy problem

7. Aotearoa New Zealand committed to an ARR scheme because a scheme would provide the opportunity for visual artists to benefit from their work on an ongoing basis, align Aotearoa New Zealand with common international practice in relation to the resale right, and contribute to supporting visual artists' career sustainability. It also meets our requirements under the NZ-UK FTA and NZ-EU FTA.
8. Introducing an ARR scheme is a significant opportunity to:
 - a. better recognise the social and cultural contribution of artists

⁴ <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Chapters/Chapter-17-Intellectual-Property.pdf>

- b. provide greater benefits to artists through royalty payments, by providing them an opportunity to benefit from their work after the first sale, particularly when the work has increased in value.
9. Some Aotearoa New Zealand visual artists (usually established artists) negotiate their own voluntary resale royalty arrangements with auction houses and dealers. There is no uniform or consistent approach, and the terms of the arrangements differ depending on what artists can negotiate. The success of these voluntary arrangements varies, and it is usually established/well-known artists who negotiate arrangements as they have the status and bargaining power to do so.
10. More than 80 countries worldwide currently have a legislated ARR scheme. In many overseas schemes, foreign nationals are eligible to receive royalties if their country of origin has a reciprocal scheme in place. The introduction of an ARR scheme will mean eligible artists can receive royalty payments when their work sells in overseas countries that have a scheme in place⁵.
11. Infometrics data from March 2021 indicates there are 3,677 people in Aotearoa New Zealand classified as painters, sculptors and potters. The Ministry has used this figure as an estimate of the number of artists who could potentially benefit, noting that this figure does not cover the full breadth of artists who may be eligible for the scheme⁶. Of these, 453 (12.3 percent) identified as Māori. Also, some photographers operate in the fine arts space (as opposed to commercial photography) and their work could potentially attract a resale royalty.
12. Sales data shows toi Māori is currently underrepresented in traditional auction house sales. Between 2018 and 2020 approximately 10 percent of artworks resold when the artist was living and two percent of artworks when the artist was deceased were created by Māori artists. The Bill uses a broad definition of toi Māori, allows private sales to opt in, and enables the resale right to be held jointly to protect against this inequity being replicated in the scheme. There is an opportunity in the drafting of supporting regulations to further strengthen protections for Māori right holders.

How the Resale Right for Visual Artists Bill proposes to address the policy problem

13. The Bill introduces a resale right for visual artists in Aotearoa New Zealand with the following policy settings:
 - a. Definitions of “visual art” and “art market professional” for the purposes of the scheme.
 - b. A flat percentage royalty rate of five percent is charged on the “hammer price”⁷ of a resale.

⁵ Reciprocal arrangements would be made by Order in Council and governed by an arrangement between the two collection agencies. The collection agency’s liability for royalties it collects will be discharged when payment is made to the relevant overseas collection agency, and the process for collection and distribution of international royalties will be outlined in the collection agency’s collection and distribution policy.

⁶ “Visual artwork” has an inclusive definition in the Bill which includes a broad range of visual artworks while explicitly excluding buildings, dramatic or musical works and literary works.

⁷ The “hammer price” is the sale price before any additions or deductions, or other charges, such as a buyer’s premium, commission or GST.

- c. Resales where an art market professional is involved, or sales to and from a publicly funded art gallery, or publicly funded museum, library or archive that collects and displays artworks, are eligible for a royalty, with a provision for private sales between individuals to opt in voluntarily.
- d. Only Aotearoa New Zealand citizens and those domiciled or resident in New Zealand, and nationals and those domiciled or resident in reciprocating countries, would be able to hold the resale right.
- e. The right can be held jointly and is inalienable.
- f. Duration of the resale right mirrors the duration of copyright in the Copyright Act (currently life plus 50 years after death, changing to 70 years after death in the future as committed to in the NZ-UK FTA and NZ-EU FTA)
- g. Artists can opt-out of receiving the royalty but not collection of the royalty.
- h. There is no cap on the maximum royalty payable on a sale.
- i. Only one organisation can act as the collection agency at any given time, and the agency will be a non-government, not-for-profit organisation.
- j. The collection agency has the power to take civil proceedings to recover any unpaid royalties or compel liable parties to provide information.

Cross-government work and ARR

Changes to the term of copyright would be reflected through the ARR scheme

- 14. The Bill states that a qualifying resale creates a resale right during the period beginning when the artwork is created and ending 50 years after the artist dies (or 50 years after the last artist dies if a work is created by multiple artists). This is intended to reflect the term of copyright.
- 15. The NZ-EU FTA (once ratified) would require the term of copyright to be extended to the life of the artist plus 70 years within four years of the FTA's entry into force. The FTA is expected to come into force in the first half of 2024. If the term of copyright is extended, it is intended that the term of the resale right in the Bill would also be extended and additional works would become eligible for the ARR scheme.

Work relating to intellectual property rights and mātauranga Māori is ongoing as part of the all-of-government response to Wai 262

- 16. The Wai 262 claim to the Waitangi Tribunal examined the Crown's policies and laws as they affect indigenous knowledge (mātauranga Māori) and taonga, including but not limited to products of Māori culture such as toi Māori (Māori art). Participants in early engagement on the introduction of an ARR scheme emphasised the importance of the scheme aligning with Wai 262 and Waitangi Tribunal recommendations.
- 17. In April 2019, Cabinet agreed to progress a whole of government strategy to address the issues set out in the Wai 262 claim and the Waitangi Tribunal's report on the claim, *Ko Aotearoa Tēnei*. Manatū Taonga is participating in the whole-of-government work programme, Te Pae Tawhiti: Wai 262.
- 18. Work regarding the protection of indigenous intellectual property (IP) and traditional knowledge, and the safeguarding and protection of rangatiratanga over Māori cultural heritage and taonga, is being progressed as part of the Te Pae Tawhiti work

programme. That work concerns the wider IP system (including legal protection for Māori (kaitiaki) rights and interests in taonga works) and is in the preliminary stages.

19. This RIS considers options for how long a royalty can be claimed if the right holder/s cannot be found, which could have implications for Māori artists' ongoing relationship with their art.
20. In developing regulatory proposals for ARR, officials discussed with Te Rōpū Toi Māori whether the collection agency could act to stop artists who misappropriate Māori cultural imagery in their work from financially benefitting from the scheme. The consensus was that preventing misappropriation was more aligned with other organisations' roles, such as the Indigenous group within the World Intellectual Property Organisation (WIPO) and Toi Iho; and that taking on this role would make the remit of the collection agency too complex.

Stakeholders and the nature of their interests

21. The key stakeholders in this area are:
 - a. visual artists and their estates, and artist advocacy groups e.g. Equity for Artists
 - b. art market professionals such as auction houses, dealer galleries and art consultants who sell artists' work on the secondary market
 - c. public art galleries and museums that are purchasers and exhibitors of artworks and have interests in supporting artists and recognising their contribution
 - d. art collectors and buyers, who sustain the art market and benefit from the purchase of art through cultural enrichment, and sometimes as an investment;
 - e. government agencies that have an interest in the establishment of a new regulatory regime in the secondary art market
 - f. sector organisations, such as Copyright Licensing New Zealand.

Previous stakeholder engagement

22. Stakeholders have been engaged on the concept of an ARR scheme on multiple occasions over the years including a 2007 discussion paper, Select Committee submissions on a 2008 ARR Bill, a 2018 Ministry of Business, Innovation and Employment (MBIE) discussion paper, a 2019 online survey, extensive stakeholder consultation in 2019 and 2020, and targeted engagement with key stakeholders in 2022 to support the development of the current legislative proposals.
23. There is strong support for an ARR scheme from artists and advocacy groups, but opposition from some art market professionals. The RIS that was prepared for the ARR scheme prior to the drafting of the Bill includes a summary of key stakeholder views and consultation from 2007 to 2022, regarding the establishment of an ARR scheme as a whole.⁸
24. Engagement specific to these proposals was also conducted with two advisory groups, a General Advisory Group and Te Rōpū Toi Māori. Both groups are generally supportive of the proposals and have had input into the options for supporting

⁸ [Regulatory Impact Statement: Artist Resale Royalty Scheme - 3 August 2022 - Regulatory Impact Statement - Ministry for Culture and Heritage \(treasury.govt.nz\)](#), Appendix Two

regulations analysed in this document. Where we have been unable to progress recommendations made by either group, this is noted in the discussion of each option.

25. A summary of advisory groups' feedback, and how it aligns or does not align with the preferred options identified in this RIS, is available as **Appendix Two**.

Public consultation undertaken on proposals for regulations

26. To aid the public consultation process, Manatū Taonga developed a discussion document outlining proposals for the regulations. The consultation ran from 13 April–25 May 2023. Manatū Taonga received 22 submissions on the proposed regulations. Of these, 10 were from individuals and 12 were from organisations. In addition, five submissions received by the select committee considering the Bill that commented on aspects of the regulations have been included in our analysis of the proposals (one from an individual and four from organisations).
27. Submitters included artists, art market professionals, museums and galleries, creative organisations, overseas collections agencies and royalty collection peak bodies, New Zealand based royalty collection agencies, and Crown entities.
28. Of the 22 submissions received through the public consultation process, the majority (18) commented on one or more of the specific proposals for the regulations. The remaining four either expressed general support or opposition to the scheme.
29. Some proposals were more heavily supported than others. For example, all 12 submitters that commented on the proposals for a cultural fund supported the proposal. In contrast, of the 14 submitters that commented on the proposed \$1,000 minimum threshold for eligible works, nine supported the threshold and five preferred a different threshold.
30. Despite the variation across different proposals, all proposals presented for public consultation were supported by the majority of submitters. A summary of submissions is attached as **Appendix Three**. Key themes that emerged through submissions have been included in the analysis in this RIS.

This document considers proposals for supporting regulations for four operational areas

31. The four operational areas described below are specific and distinct. Regulating these will contribute to the overarching objectives of the ARR scheme in different ways.
32. For the legislation to operate effectively, regulations are required that will:
 - a. set the dollar threshold at which a royalty will be payable on a resale (the **threshold sale price**);
 - b. set the percentage which would be deducted from each royalty payment as an **administrative fee** to cover the collection agency's operating costs
 - c. prescribe detail on the operation of the **collection agency**, including how the appointments process will enable it to provide culturally appropriate support to Māori, how complaints against the collection agency are to be resolved; and record-keeping and monitoring requirements;
 - d. provide detail on the management of **undistributed royalties**.
33. In analysing options for the above operational areas, this RIS considers the wider context of the Aotearoa New Zealand art market, as well as funding limitations for the establishment of the scheme.
34. For the purposes of this analysis, the counterfactual is primarily informed by regulations from the UK's ARR scheme (which was also used for analysis undertaken for the legislation). The cultural and constitutional context of Aotearoa New Zealand means there is a need to consider how Māori rights and interests will be recognised through the scheme. This means comparisons with outcomes in the UK are of limited value in some areas.

What objectives are sought in relation to the policy problem?

35. The regulations seek to achieve the following objectives:
 - a. **maximise the benefits to visual artists** (and their estates if the artist is deceased), with particular regard to respecting the role of Māori as tangata whenua and enabling the scheme to support toi Māori
 - b. **minimise the costs of complying with the scheme** to art market professionals, buyers and sellers and the broader market
 - c. **support a well-functioning Aotearoa New Zealand secondary art market**, which avoids negative impacts on art sales and perverse incentives on participants in the scheme.
 - d. ensure the option is as **simple and cost effective as possible to administer** with the long-term goal of ultimately becoming self-sustaining.

What criteria will be used to compare options?

36. Options for all policy areas will be assessed using the following criteria:
 - a. **benefits to artists** – what benefits are there to artists and how equitable are the benefits to different artist groups (e.g. Māori)?

- b. **administration costs** – what day-to-day costs does the option create for government, the collection agency, and the sector (including art market professionals, buyers, sellers)?
 - c. **flexibility/sustainability** – how flexible, sustainable, and future-proofed is the option?
 - d. **Te Tiriti o Waitangi considerations** – to what extent does the design and implementation of the scheme meet the Crown’s Te Tiriti obligations?
37. For policy settings where no substantive impacts have been identified from a criterion, that criterion is not included in the analysis table.

What scope will options be considered within?

38. Options were considered within the following scope:
- a. **Previous Cabinet decisions.** In 2022, Cabinet agreed to the drafting of legislation to establish an ARR scheme.
 - b. **The draft Resale Right for Visual Artists Bill** currently being considered by Parliament, which meets all our commitments under the NZ-UK FTA (art 17.46) and the NZ-EU FTA (art 18.14). The key policy settings included in legislation are noted above.
39. The options were informed by feedback gathered through the consultation process, targeted engagement with advisory groups, and the experience of international schemes.
40. There is significant international precedent for an ARR scheme, and international standard practice, experiences and policy reviews have also informed this analysis. Some elements of ARR schemes are common practice across many international schemes; for example, all international ARR schemes we investigated⁹ had a percentage-based administrative fee, though the amount of the percentage varied.

The availability of funding limits what the scheme can do

41. A key objective of the scheme is to be self-sustaining over time. Therefore, any options that would require the scheme to be government-funded in perpetuity are out of scope.
42. The balance between an administrative fee percentage that is tolerable for artists and the goal of making the scheme self-sustaining places constraints on what we can expect the collection agency to deliver.
43. Budget 2023 set aside \$954,000 over four years to implement the scheme and sustain its first four years of operation. This figure funds the basic functions of the scheme, but does not include monitoring costs, costs for communications in alternative languages and accessible formats, or costs to support art market professionals to adapt to the requirements of the scheme.

⁹ This includes the UK, Australian, Danish, German, French, Icelandic and Finnish ARR schemes; admin fee percentages ranged from 12 percent (Germany) to 25 percent (Finland).

Policy area 1: Threshold sale price

Section 1: Diagnosing the policy problem

What is the policy problem or opportunity?

A threshold is needed to ensure the scheme can be managed efficiently

44. A resale royalty will only be payable on resales that meet a specified minimum threshold in value. The Bill specifies that this threshold must sit within the range of \$500-\$5,000, and empowers regulations to set this specific threshold.
45. Below a certain sale price the cost of royalty collection and distribution may outweigh the value of the royalty. If no, or too low, a threshold is established, 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.

Where the threshold is set will impact which artists receive royalties

46. A high threshold may disadvantage emerging artists and specific demographics of artists such as Māori, Pacific, women and disabled artists whose works tend to resell for lower prices. Based on 2020 auction house data, a threshold of \$2,000 would mean 495 fewer sales were eligible for the royalty than with a threshold of \$1,000.
47. Feedback received from Māori artists indicates that many sales of Māori art are undertaken online and directly in primary sales, and that many Māori artists do not have dealer galleries or public galleries promoting their work. It is likely that a high threshold sale price would exclude Māori disproportionately to some other groups.
48. Engagement and available data indicate Pacific artists are more likely to sell or gift their works online and directly in primary sales, rather than using dealer galleries or auction houses. Engagement with Pacific artists also suggests there is a lack of knowledge of Pacific art forms among New Zealand art market professionals. In some circumstances Pacific art sold on the secondary market may therefore be undervalued, with knock-on effects for royalty payments.
49. Of visual artists whose works sold for \$1,000 or more between 2018 and 2020, approximately 10 percent were by Māori artists and less than five percent were by Pacific artists. Of the visual artists selling works for \$1,000 or more between 2019 and 2021 in Aotearoa New Zealand, 38 percent were female and 62 percent were male. Engagement suggests works sold by disabled artists rarely exceed \$1,000.

Section 2: Options to address the policy problem

What options are being considered?

Policy setting	Options
The threshold sale price (how much a work must be sold for to be eligible for the scheme)	<ul style="list-style-type: none"> • <u>Counterfactual</u>: The regulations will require a threshold sale price of \$1,600 (roughly equivalent to the UK threshold of EUR 1,000). • The regulations will require a threshold sale price of \$500 (the threshold proposed in the 2008 Bill). • The regulations will require a threshold sale price of \$1,000. (preferred) • The regulations will require a threshold sale price of \$2,000. • The regulations will require a threshold sale price of \$5,000.

Options for the threshold sale price

50. Setting the threshold sale price involves a trade-off between ensuring the simplicity of administering the scheme and maximising the benefits to artists. The most direct way to ensure the scheme is easy to administer is by minimising the number of sales included, particularly low-value sales, while the simplest way to maximise the benefits to artists is to include the greatest number of sales. We propose establishing a threshold sale price that will balance these outcomes.
51. Key considerations are that the value of the royalty needs to be higher than the costs associated with collecting it for the scheme to be an effective use of funds; that engagement with the sector has established there is an upper acceptable limit for a threshold sale price; and that higher threshold levels may disproportionately exclude a range of groups who face structural barriers to exhibiting and selling art.
52. A variety of thresholds are used internationally ranging from approximately \$26 NZD in Hungary to approximately \$4,800 in Ireland. No country with an ARR scheme in place has both a similar population and comparably sized art market to Aotearoa New Zealand, making direct comparisons difficult. Feedback from art market professionals and the Australian collection agency recommended that the threshold be set at a round and memorable number to increase the simplicity of, and compliance with, the scheme.
53. The counterfactual option would broadly align with the threshold in the UK scheme (1,000 Euros). Option Two would set the threshold at \$500 which is what was proposed in the discharged Copyright (Artist Resale Right) Amendment Bill 2008 (\$500 in 2008 would be just under \$700 in 2023 accounting for inflation). \$500 is also broadly comparable to schemes in Finland and Denmark. Option Three sets the threshold at the preferred \$1,000, Option Four would set the threshold at \$2,000, and Option Five would set the threshold at \$5,000, which was recommended by a number of art market professionals through public consultation. The analysis in the table below is based on 2020 auction house data.

	Counterfactual: Threshold of \$1,600 (roughly the same as the UK scheme)	Option Two: Threshold of \$500	Option Three: Threshold of \$1,000 (preferred)	Option Four: Threshold of \$2,000	Option Five: Threshold of \$5,000
Benefits to artists	0 Limited benefits to artists whose works tend to sell for lower prices. 300 unique artists would have received royalties through auction house sales in 2020 (31.9% of sales). Would mean a minimum royalty of \$80 before tax and admin fees.	++ Would benefit more artists than the counterfactual. 498 unique artists would have received royalties through auction house sales in 2020 (54% of sales). Would particularly benefit emerging artists, and artists whose work tends to sell for lower prices. Would mean a minimum royalty of \$25 before tax and administrative fees.	+ Would benefit more artists than the counterfactual. 369 unique artists would have received royalties through auction house sales in 2020 (40.3% of sales). Would mean a minimum royalty of \$50 before tax and admin fees.	- Would benefit slightly fewer artists than the counterfactual. 275 unique artists would have received royalties through auction house sales in 2020 (28% of sales). This would disadvantage emerging artists and artists whose work tends to sell for lower prices. Would mean a minimum royalty of \$100 before tax and admin fees.	-- 148 unique artists would have received royalties through auction house sales in 2020 (18% of sales), fewer than half the number who would benefit under the counterfactual. This would disadvantage emerging artists and artists whose work tends to sell for lower prices. Would mean a minimum royalty of \$250 before tax and admin fees.
Administra tion costs	0 Would incur modest administrative impacts on liable parties and the collection agency from the royalty collection process.	-- Would incur much higher admin costs for the collection agency, as approximately 50% more resales would be processed ¹⁰ .	- Would incur higher admin costs for the collection agency, as approximately 18% more resales would need to be processed.	0 Would incur slightly lower admin costs for the collection agency, as approximately 3% fewer resales would be processed.	++ Would incur much lower admin costs for the collection agency, as approximately 54% fewer royalties would be processed.
Flexibility / sustainabil ity	0 Administrative fees are likely to be enough to sustain the scheme in the long term, but it is difficult to predict when this will happen due to market fluctuation.	-- Managing a large volume of low value royalties would create additional work for the collection agency, while providing low administrative fees to the agency (e.g. a \$500 sale would only attract a \$5 administrative fee). This could make it harder for the	0 Administrative fees are likely to be enough to make the scheme self-sustaining in the long term. It is difficult to predict when this will happen due to market fluctuation, but it would	0 Administrative fees are likely to be enough to sustain the scheme in the long term. It is difficult to predict when this will happen due to market fluctuation, but it	+ Administrative fees are likely to be enough to sustain the scheme in the long term. The collection agency would be likely to be more responsive and able to improve the scheme over time as funding would be available for long-term planning,

¹⁰ In 2020 a \$500 threshold would have resulted in \$15,866 worth of extra royalties generated compared to a \$1,000 threshold (or a 2.4 percent rise). However, the collection agency would have processed 575 more sales (or a 34.2 percent rise).

		scheme to become self-sustaining. The collection agency would be likely to be less responsive, and less able to improve the scheme over time.	take more time than under the counterfactual.	would take less time than under the counterfactual.	as well as royalty collection and distribution.
Te Tiriti o Waitangi considerations	0 A high threshold sale price could exclude Māori disproportionately to some other groups.	++ Would include the most sales possible under the parameters in the Bill and therefore benefit the most Māori artists possible through royalties, particularly emerging Māori artists.	+ Would include more sales than the counterfactual, benefitting more Māori artists. Te Rōpū Toi Māori supported this option.	- The higher the threshold the more disproportionate the exclusionary impact on Māori would be.	-- The higher the threshold the more disproportionate the exclusionary impact on Māori would be.
Overall assessment	0	0	1	-2	-1

Key for qualitative judgements:

- ++** much better than the counterfactual
- +** better than the counterfactual
- 0** about the same as the counterfactual
- worse than the counterfactual
- much worse than the counterfactual

54. A minimum threshold of \$1,000 strikes a balance between ensuring enough resales are captured by the scheme and the royalty collected being high enough to offset the cost of collection and distribution.
55. The additional benefits to artists from a \$500 threshold would be low (a \$500 resale would generate a royalty of \$25 before tax), especially when weighed against the additional administrative costs of having to process many lower value royalties.
56. Thresholds of \$1,600, \$2,000 and \$5,000 would ensure the scheme is simpler and more cost-effective to administer, but the fewer benefits to artists (particularly emerging artists), and disproportionate exclusion of groups such as Māori, Pacific, women and disabled people would lessen the overall reach and positive impacts of the scheme. Therefore, the preferred option is Option Three, a threshold of \$1,000.

Te Tiriti o Waitangi implications of the threshold sale price

57. The higher the threshold sale price is set, the less benefit from the scheme will be passed on to Māori artists selling at the lower end of the market, which would particularly impact emerging Māori artists. However, below a sale price of \$1,000, each royalty payment would be of limited financial benefit to artists. Te Rōpū Toi Māori indicated that they would support a threshold of \$1,000.

Policy area 2: Administrative fee

Section 1: Diagnosing the policy problem

What is the policy problem or opportunity?

The scheme needs to collect revenue to meet administrative costs

- 58. Running an ARR scheme will impose operating costs on the collection agency. 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 in exchange for services. The Bill requires the fee amount to be set in regulations and provides for the Minister to alter the administrative fee in the future in consultation with the collection agency. The fee would be reviewed over time to ensure it continues to cover the costs of the scheme and nothing else.
- 59. Funding of \$954,000 over four years has been allocated through Budget 2023 to meet the implementation and initial operating costs of the ARR scheme. This allowance means that in initial years, only partial cost recovery would be needed to fund the service. However, it is the Government’s expectation that the administrative fee eventually fully recovers the costs of royalty collection and distribution so that the scheme will be self-sustaining and will not require ongoing government funding.
- 60. International ARR schemes generally recover costs through an administrative fee. Both the Australian and UK schemes, for example, have a 15 percent administrative fee.
- 61. Options related to the administrative fee have cost recovery implications. An assessment of the cost recovery implications is attached as **Appendix One**.

Section 2: Deciding upon options to address the policy problem

What options are being considered?

Policy setting	Options
What percentage of the resale royalty is deducted for the administrative fee	<ul style="list-style-type: none">• <u>Counterfactual</u>: A 15% administrative fee is deducted from the resale royalty payment.• A 20% administrative fee is deducted from the resale royalty payment (preferred).• A 25% administrative fee is deducted from the resale royalty payment.

Options for percentage of the resale royalty deducted as an administrative fee

62. There are three options being considered for the administrative fee percentage: 15 percent, 20 percent and 25 percent. A 15 percent administrative fee is used as the counterfactual and is based on the Australian and British ARR schemes. Internationally, admin fee percentages generally sit within the range of 15-25 percent¹¹. The administration of the scheme and its compliance costs need to be balanced with the amount artists receive from the royalty payment and needs to take the size of Aotearoa New Zealand's art market into account.

	Counterfactual: A 15% administrative fee is deducted from the resale royalty payment	Option Two: A 20% administrative fee is deducted from the resale royalty payment (preferred)	Option Three: A 25% administrative fee is deducted from the resale royalty payment
Benefits to artists	0 Provides the greatest monetary benefit to artists.	0 Deducts more from the resale royalty. However, consultation found that artists largely supported a 20% fee.	-- Under this option artists would receive the lowest net royalty payments. The General Advisory Group recommended 20% as the highest fee that should be set.
Administration costs	0 Least likely to meet the collection agency's administrative costs.	+ Provides the collection agency with more income increasing the likelihood it will be able to meet its administrative costs.	++ Most likely to enable the collection agency to meet its administrative costs.
Flexibility / sustainability	0 The scheme would not be self-sustaining.	+ More likely than the counterfactual that the scheme will eventually become self-sustaining without changes to the administrative fee. Anything lower and the scheme will likely struggle to become self-sustaining in the long-term.	+ Provides the most financial sustainability for the collection agency's administrative costs. However, removing a quarter of the resale royalty payment, compared to the counterfactual, would reduce the scheme's value for participants. The administrative fee would need to be revised downward if the level of funding is not needed to meet the collection agency's costs.
Overall assessment	0	2	1

¹¹ Manatū Taonga investigated a range of international ARR schemes, including those operating in the UK, Australia, Denmark, Germany, France, Iceland and Finland. Admin fee percentages ranged from 12 percent (Germany) to 25 percent (Finland).

Te Tiriti o Waitangi implications of the administrative fee

63. Engagement with Te Rōpū Toi Māori suggests that deducting the administrative fee from the royalty payment could impact the rangatiratanga of artists to determine how a royalty payment is used. However, charging the administrative fee on top of the royalty is out of scope as the Bill sets out that the administrative fee is calculated as a percentage deducted from the royalty. This issue was not raised through public consultation on the discussion document or the Bill, with the administrative fee amount being more of a focus for submitters.

PROACTIVELY RELEASED

Policy area 3: Operation of the collection agency

Section 1: Diagnosing the policy problem

What is the policy problem or opportunity?

The Bill requires the collection agency to provide appropriate support to Māori artists

64. The Bill enables the Minister to appoint a non-government, not-for-profit organisation by notice in the *New Zealand Gazette*. The Bill also requires the collection agency to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists in its operation of the scheme.
65. The Bill enables regulations to be made that outline what the Minister must consider when appointing an organisation as the collection agency. There is an opportunity through the regulations to set out what the Minister will take into account when making a decision on the appointment of the collection agency, and how that can help to ensure that the appointed collection agency has the capability to provide culturally appropriate support to Māori in its operation of the scheme.

A process is needed for addressing disputes and complaints that arise under the scheme

66. The Bill stipulates that regulations must provide detail on the collection agency's operation, including any "matters relating to the conduct or operation of the agency". Having a method for resolving complaints will mean concerns raised with the operation of the scheme can be addressed through a fair process, involving all affected parties.
67. There is an opportunity through the regulations to establish an expectation of the collection agency's handling of complaints.

The impacts of the scheme on artists need to be understood

68. The Bill requires Manatū Taonga to monitor the collection agency in the manner required by the regulations.
69. Under Article Three of Te Tiriti o Waitangi, the Crown is obligated to ensure Māori receive the same benefits as other New Zealanders. Having a clear understanding of how the scheme is impacting Māori is key to inform whether Māori are receiving equal benefits, and, if not, to inform what changes should be made to the scheme to address this. Tracking the impacts of the scheme on Māori artists will also provide evidence to improve how the scheme supports Māori artists' career sustainability, and this could indirectly benefit the transmission and preservation of Toi Māori.
70. Aotearoa New Zealand has cultural and political ties to Pacific countries that include governing responsibilities in three realm countries in the Pacific and a significant Pacific diaspora. Tracking the impacts of the scheme on Pacific artists will also provide evidence to improve how the scheme supports Pacific artists' career sustainability, and this could indirectly benefit the transmission and preservation of Pacific art forms.
71. While the Bill does not stipulate that the collection agency must report on the status of royalties received by Māori artists and Pacific artists, regulations provide an opportunity to require specific data to be collected and monitored to improve the scheme's responsiveness to any inequities that become evident.

72. Where possible, data would be collected that enables the scheme to respond to any other distributional impacts (such as impacts on women artists, ethnic minority artists, and disabled artists). This would be set out in operational documents, for example, the contract for services of the collection agency, so that the data gathering infrastructure of the collection agency can be taken into account in determining what data should be gathered and how (for example, through a register of artists).

Section 2: Deciding upon options to address the policy problem

What options are being considered?

73. This section analyses options for key elements of how the collection agency will operate. The options consider how the regulations give effect to the obligation in the Bill for the collection agency to respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists in its operation of the scheme. This section also considers options relating to how complaints and disputes under the scheme are addressed, and options for record-keeping and monitoring.

Policy setting	Options
Ensuring the collection agency can appropriately support Māori	<ul style="list-style-type: none"> • <u>Counterfactual</u>: Regulations are silent on how the collection agency will provide culturally appropriate support to Māori. • Regulations require the collection agency to be a Māori-led organisation. • Regulations enable a co-governance model (recommended by Te Rōpū Toi Māori). • Regulations require the Minister to be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists, when making a decision on the appointment of the agency (preferred).
Addressing complaints that arise in the operation of the scheme	<ul style="list-style-type: none"> • <u>Counterfactual</u>: No process is regulated for resolving complaints. • Regulations require the collection agency to have an internal process for resolving complaints (preferred). • Regulations set up an independent complaints process.
Reporting on how the scheme is impacting artists	<ul style="list-style-type: none"> • <u>Counterfactual</u>: The collection agency keeps general records of how the scheme is impacting artists. • In addition to general records, the collection agency's records include specific details on how the scheme is impacting Māori and Pacific artists (preferred).

Options for ensuring the collection agency can appropriately support Māori

74. The Bill puts obligations on the collection agency, one of which is to 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. There would need to be appropriate knowledge and capability in place to do this effectively.
75. Under Te Tiriti o Waitangi, the Crown has an obligation to establish and implement the scheme in a way that supports rangatiratanga and ōritetanga. As such, it is important that the scheme supports the collection agency to uphold the obligation above, to enable the scheme to provide equal benefit for Māori artists. As the collection agency is not a government organisation, the Crown is limited in how prescriptive it can be regarding governance of the collection agency, and this has been considered in the options for involving Māori in governance and decision-making of the scheme below.
76. Engagement on the policy settings for the Bill showed that there was significant demand from Māori for the collection agency to have Māori representation and governance and provide guidance regarding allocation of the funds, or what should happen if the artist cannot be found in instances of collective or Māori ownership.
77. Under the counterfactual, there would be no specific provision in the regulations to ensure the collection agency has the capability to deliver culturally appropriate support for Māori. This would risk the collection agency not being able to be held accountable for how it delivers for Māori artists or meets the requirements in the Bill described above. It would therefore also risk the Government's implementation of the scheme not meeting its commitment (made in the August 2022 Cabinet paper on policy settings for the Bill) to provide for an operational framework that supports rangatiratanga and ōritetanga.
78. Option Two would require the collection agency to be Māori-led. This would be most likely to ensure Māori rights and interests are accounted for in decision-making and provide the best support for Māori artists but would limit the number of entities eligible to be the collection agency. Very few entities have the required systems and capability to perform the core functions of a collection agency. Limiting the pool of applicants is more likely to require significant capability building to enable organisations to build the required systems and capability to perform the needed functions, which will create significant extra costs for Government.
79. Option Three would instead provide for governance arrangements for the scheme that sit outside the collection agency, to enable a co-governance model to be established. This option was recommended by Te Rōpū Toi Māori. While this would also be likely to ensure Māori rights and interests are accounted for in decision-making and support provided for Māori artists, it would not be feasible without high levels of ongoing government funding.

80. Under Option Four, the Minister must be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua, and provide culturally appropriate support to Māori artists, before appointing a collection agency. For example, this would include assessing whether the prospective collection agency's governance and management structure includes individuals who whakapapa Māori and can build strong relationships with, and help deliver an effective service to, Māori artists.
81. Option Four is unlikely to be as effective as Options Two and Three in guaranteeing an effective service for Māori artists but adds a layer of accountability beyond the counterfactual and is consistent with Government's commitment to provide for an operational framework for the scheme that supports rangatiratanga and ōritetanga. It would, however, create some administrative costs compared to the counterfactual, as prospective collection agencies would have to plan for and detail in their tenders how they would provide culturally appropriate support and involvement of Māori in governance and decision-making, as well as potentially build the capability to deliver on this. This may also reduce the number of organisations willing to apply or that are capable of taking on the collection agency role, but not to the same extent as Options Two and Three.

	Counterfactual: No specific provision relating to how the collection agency supports Māori artists	Option Two: Māori-led collection agency	Option Three: External governance arrangements to enable co-governance	Option Four: Minister must be satisfied that the collection agency can uphold obligation to respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists before making an appointment (preferred)
Benefits to artists	0 Difficult to hold the collection agency accountable for delivering for Māori artists under this option.	+ Likely to enhance the ability of the collection agency to deliver an effective service to Māori artists and build trust.	+ Likely to enhance the ability of the collection agency to deliver an effective service to Māori artists and should enhance trust in the organisation among Māori artists.	+ Would help ensure that the prospective collection agency has the capability to provide an effective service to Māori artists. Adds a layer of accountability beyond the counterfactual.
Administration costs	0 No additional administrative costs on prospective collection agencies.	-- Would limit the number of eligible entities to be the collection agency and could therefore create significant costs related to supporting the collection agency to build capability.	-- Would require a bespoke governance model to be established for the collection agency which would create significant personnel costs.	- Would impose some administrative costs on prospective collection agencies who would have to plan for, detail in their tenders, and ensure they have the capability to deliver on these requirements.

<p>Flexibility / sustainability</p>	<p>0 No impact on scheme sustainability, as governance would be up to the collection agency. Maximises flexibility in the collection agency's appointment.</p>	<p>- Would limit options if the collection agency needed to be replaced and increases the risk of no collection agency being appointed. Because the collection agency would be well-placed to deliver an effective service to Māori artists, is likely to increase confidence in the scheme and therefore scheme sustainability.</p>	<p>- Because governance sits outside the collection agency it could be transferred between successive collection agencies. Would need significant ongoing government funding, which does not align with the objective of the scheme to be self-sustaining in the long-term. Because the collection agency would be well-placed to deliver an effective service to Māori artists, is likely to increase confidence in the scheme and therefore scheme sustainability.</p>	<p>0 Could limit the number of eligible collection agencies, so could increase the risk that an agency is not appointed. Would not require significant additional Crown funding. Gives the appointed collection agency flexibility with how it upholds the obligation, which supports sustainability of the scheme.</p>
<p>Te Tiriti o Waitangi considerations</p>	<p>0 Risk that the collection agency would be unable to meet the requirements in the Bill relating to how Māori will be supported in the scheme's operation.</p>	<p>++ Guarantees the most Māori representation in governance and so most strongly enables the collection agency to deliver an effective service for Māori artists and make strategic decisions that fully account for Māori rights and interests. Would support the Government to deliver on its commitment to support rangatiratanga and ōritetanga in the scheme.</p>	<p>++ Guarantees Māori representation in governance and so strongly enables the collection agency to deliver an effective service for Māori artists and make strategic decisions that fully account for Māori rights and interests. Would support the Government to deliver on its commitment to support rangatiratanga and ōritetanga in the scheme.</p>	<p>+ Likely to result in a more effective service to Māori artists compared to the counterfactual and would enable an operational framework for the scheme that supports rangatiratanga and ōritetanga.</p>
<p>Overall assessment</p>	<p>0</p>	<p>0</p>	<p>0</p>	<p>1</p>

82. Option Four is the preferred option because it recognises Aotearoa New Zealand's unique cultural context and supports the Crown to deliver on its commitment to provide for an operational framework for the scheme that supports rangatiratanga and ōritetanga. It also does this without the implementation costs compromising the sustainability of the scheme.
83. The Minister would assess aspects of the collection agency's operation to ensure it can deliver its obligations. For example, the Minister could consider Māori representation in governance, the collection agency's staff capability, existing relationships the collection agency may have with Māori artists and communities, and/or how a Te Ao Māori worldview is reflected in the agency's strategies or business model.

84. Manatū Taonga would encourage Māori-led organisations to apply for the role of the collection agency. Further to this, the regulations would require the collection agency to report on and be monitored for its engagement with Māori on significant changes to the scheme, and the structure and purpose of the cultural fund. This is discussed further in the implementation and monitoring sections of this RIS. If this engagement was found to be low, and the scheme to be unpopular with Māori artists, action could be taken either through amendments to the contract for services, or by replacing the collection agency after its fixed term if necessary.

Options for addressing complaints that arise in the operation of the scheme

85. It is important that complaints that arise under the scheme can be addressed through a fair process, involving all affected parties. This would encourage compliance with the scheme, enable the scheme to run more efficiently and enhance public trust in the scheme. The process would need to cover both complaints against the collection agency and complaints against other participants in the scheme.

86. The options are to not regulate a process for resolving complaints, to require the collection agency to have a formal complaints process, or to regulate an independent complaints process, for example one that would include independent mediation.

87. The Bill makes the collection agency subject to the Ombudsmen Act 1975. If participants are unhappy with the outcome of a complaints process, unresolved complaints can therefore be escalated to the Ombudsman and then the courts if necessary, adding further layers of accountability. The analysis below accounts for these processes being stipulated in the Bill.

	Counterfactual: No regulated process for resolving complaints	Option Two: Regulations require the collection agency to have an internal process for resolving complaints (preferred)	Option Three: Regulations prescribe an independent complaints process
Benefits to artists	0 May mean that there is no complaints process, which could make it difficult for artists to contest and protect their rights under the scheme. However, participants in the scheme would still be able to appeal to the Ombudsman or the courts.	+ Ensures artists have a process for raising complaints against the collection agency, and against other participants in the scheme, enabling artists to better protect their rights under the scheme.	- Ensures artists have a process for raising complaints. However, may be more difficult for artists to access, both administratively and financially, and so less likely to enable artists to protect their rights under the scheme. However, the process being independent could enhance trust in the scheme among artists.
Administration costs	0 If there is no complaints process, participants in the scheme would have to fund their own mediation, arbitration and/or	- Could create higher costs for the collection agency to administer the complaints process. May also create costs for the collection agency	- Likely to be lower cost for artists than going through the courts, but participants in the scheme would have to use independent

	court costs. If there is a complaints process, it could create some admin costs for the collection agency.	to design/establish a complaints process if they don't have one already. Likely to lower costs for other participants in the scheme, who may be more likely to resolve issues before they need to progress to court.	mediators or dispute resolution in all cases whether or not it is their most cost-efficient option. An independent complaints process would not create admin costs for the collection agency.
Flexibility / sustainability	0 Provides flexibility to the collection agency to manage complaints how it wants to. Could mean there is no complaints process, which could undermine artists' trust in the scheme, and could mean the scheme is less sustainable long-term.	+ Less flexible than the counterfactual. However, gives artists a clear, low-cost process to raise complaints, which is likely to support compliance with the scheme and therefore support the scheme's long-term sustainability.	- Less flexible than the counterfactual because a process is prescribed. While an independent process is likely to enhance trust in the scheme, it would be more costly and may mean less artists are able to access the process, which could undermine compliance and therefore the scheme's long-term sustainability.
Overall assessment	0	1	-3

88. Option Two is the preferred option. It guarantees participants the ability to make complaints about the scheme without having to face potentially prohibitive costs associated with courts or an independent mediation process. The absence of an independent complaints process could be an issue for some participants. However, in cases where a participant is unhappy with how a complaint has been resolved they still have the option of referring the complaint to the Ombudsman or pursuing court action themselves. This ultimately provides for cost effective accountability that should ensure trust in the scheme and help improve participants' experience of the scheme in the long-term.

Options for the reporting of how the scheme is impacting artists

89. The Bill outlines that Manatū Taonga must monitor and report on the performance of the collection agency in the manner required by regulations. Under the counterfactual, regulations would require the collection agency to keep general records of how the scheme is impacting artists. Option Two proposes a regulatory requirement to report on the impact of the scheme on Māori and Pacific artists in addition to general records.
90. Operational settings, such as the contract for the collection agency's services, would be used to ensure more extensive and disaggregated demographic data is collected as far as is practical, for example data on royalties received by women, disabled artists, or ethnic minority artists as well as more specific data, for example about wāhine Māori artists (where privacy considerations allow). This would be given further consideration in the five-year review of the scheme.

	Counterfactual: Regulations require the collection agency to keep general records of how the scheme is impacting artists	Option Two: In addition to general records, regulations require the collection agency to keep specific records on how the scheme is impacting Māori and Pacific artists (preferred)
Benefits to artists	0 Ensures the collection agency gathers adequate data on how the scheme is working for artists. This data could be used to help improve the scheme for artists.	+ Ensures the collection agency gathers adequate data on how the scheme is working for artists. Will also provide clear data on whether Māori and Pacific artists are benefiting equitably from the scheme, which would not be evident under the counterfactual, and provides the strongest evidence base to make improvements to the scheme for artists.
Administration costs	0 The collection agency will have to incur costs to gather data and keep these records.	- Increased admin costs due to the extra work required to monitor the scheme's impact on Māori and Pacific artists specifically.
Flexibility / sustainability	0 Records of how the scheme is impacting artists will provide useful information on what the collection agency can improve on, which will benefit the sustainability of the scheme.	0 This will provide a fuller picture of what the collection agency can improve on and will also benefit the sustainability of the scheme.
Te Tiriti o Waitangi considerations	0 Does not allow the collection agency or Manatū Taonga as the monitoring agency to understand how the scheme is specifically impacting Māori. Without this there is no way of knowing if Māori are benefiting equitably from the scheme.	+ The Bill stipulates that the collection agency must provide culturally appropriate support to Māori artists, as well as recognising the different needs of all peoples in New Zealand. The inclusion of specific reporting requirements on how the scheme is impacting Māori will better uphold Te Tiriti commitments than the counterfactual as it will enable both the collection agency and Manatū Taonga to assess if Māori are benefiting equitably from the scheme and, if not, inform what changes need to be made to ensure this can happen.
Overall assessment	0	1

91. An artist resale royalty scheme is an inherently Western concept. It also regulates a secondary art market that is based on Western economic models and values. Officials have included several design elements in New Zealand's scheme to help ensure that Māori and Pacific artists can benefit equitably from the scheme. Under the counterfactual there would be no way of knowing if this is occurring, so there would be nothing to inform if and where changes need to be made to enable this. Such an approach would not be consistent with the Crown's obligations under Te Tiriti and would fail to recognise some of New Zealand's richest artist heritage. As such, Option Two is the recommended option.

Te Tiriti o Waitangi implications of collection agency policy settings

Ensuring the collection agency can appropriately support Māori

92. Officials have considered what the role of Government should be in ensuring that the scheme supports Māori and Te Tiriti interests in this policy, including reflecting Government's commitment that the scheme will support rangatiratanga and ōritetanga. The collection agency will have significant responsibilities in this area but are not representatives of the Crown; therefore, the provisions set out in legislation and regulations that govern the agency's operation will be the main lever for government to ensure the scheme protects Māori rights and interests.
93. Regulations requiring the Minister to be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists before making an appointment will support the exercise of rangatiratanga within the scheme and improve the scheme's responsiveness to issues involving toi Māori.
94. Te Rōpū Toi Māori proposed that regulations could require the collection agency to be Māori-led. The analysis does not support this option as it would severely limit the pool of entities who could be appointed as the collection agency, which could mean no collection agency can be appointed and creates risks to the future flexibility of the scheme. Establishing a co-governance model independent of the collection agency is cost prohibitive. However, this does not preclude the collection agency from indicating its intent to work towards being Māori-led, establishing a co-governance model in its application for the role of collection agency or a Māori-led agency applying to be the collection agency. Such arrangements would work in an agency's favour when the Minister is assessing its ability to uphold the obligations mentioned above.

Policy area 4: Undistributed royalties

Section 1: Diagnosing the policy problem

What is the policy problem or opportunity?

A process is needed to handle declined, unclaimed and donated royalties

95. The Resale Royalty for Visual Artists Bill enables artists to decline individual royalties or all royalties collected on their behalf ¹². In addition, the collection agency may not always be able to locate artists who are due royalties. The Bill provides for royalties to be retained by the collection agency in these cases and used in accordance with the regulations.
96. Regulations therefore need to specify how resale royalties that are declined or unclaimed must be used or managed. This would include:
 - a. how long royalties must be claimable if the right holder/s cannot be reached
 - b. whether or not the collection agency establishes a cultural fund
 - c. what is done with undistributed royalties, including unclaimed, declined and donated royalties.
97. Establishing a process to manage undistributed royalties provides an opportunity to broaden the reach of the ARR scheme, as opposed to ARR schemes overseas which generally benefit artists selling at the high end of the secondary art market more than emerging artists.
98. For example, a cultural fund could be established as a redistribution mechanism to enable royalties that are not distributed to be used for the benefit of visual artists more generally. This could increase the scheme's benefits for demographics of artists who face barriers to creating, exhibiting and selling art, or whose work tends to sell for lower prices. Engagement and available data suggest that in the New Zealand context, Māori, women, Pacific, and disabled artists, and artists from ethnic minority communities, may receive less income from royalty payments than other groups. Engagement on policy settings for both the Bill and regulations showed significant support for a cultural fund being established.

¹² The Bill requires that all payable royalties are collected to avoid the possibility of art market professionals pressuring artists to opt out of the scheme as a condition of sale.

Section 2: Deciding upon options to address the policy problem

What options are being considered?

Policy setting	Options
Length of time a royalty will be claimable if the right holder cannot be located	<ul style="list-style-type: none"> • Counterfactual: Regulations require royalty payments, where the right holder cannot be located, to be claimable for a fixed term of six years. (preferred) • Regulations require royalty payments, where the right holder cannot be located, to be claimable indefinitely (recommended by Te Rōpū Toi Māori).
Establishment of cultural fund	<ul style="list-style-type: none"> • Counterfactual: Regulations are silent on the cultural fund. • Regulations enable the collection agency to establish and operate a cultural fund, with operation and detail of the fund to be managed by the collection agency. (preferred) • Regulations include the details of how the cultural fund would work and is structured.
How royalties that cannot be distributed are used in the event there is no cultural fund.	<ul style="list-style-type: none"> • Counterfactual: The collection agency would be free to decide what to do with undistributed royalties in the event there is no cultural fund. • Regulations would enable the collection agency to keep unclaimed royalties to use for its own administrative costs. • Regulations would require undistributed royalties to be returned to liable parties. If the liable parties could not be found then the collection agency may retain the royalties to help fund its administrative costs. (preferred)

Options for the length of time a royalty will be held if the right holder cannot be located

99. The collection agency would be required to use its best endeavours to identify and locate the right holder/s and distribute royalties to them. However, the collection agency may not always be able to do this.
100. The counterfactual option would require unclaimed royalties to be held by the collection agency for a fixed term of six years, with right holders able to come forward and claim a royalty any time within that period. DACS, one of the UK collection agencies, holds royalties for six years, but the UK scheme's regulations do not stipulate a timeframe. The Australian legislation requires unclaimed royalties to be held for six years.
101. Option Two would require unclaimed royalties to be claimable indefinitely, which would mean that right holders could come forward and claim these payments at any time in the future. While there are no comparable examples in overseas schemes of holding unclaimed royalties indefinitely, Option Two was recommended by Te Rōpū Toi Māori to recognise the perpetual nature of relationships between a creator and their work.

	Counterfactual: The regulations will require royalty payments, where the right holder cannot be located, to be claimable for a fixed term of six years (preferred) (broadly aligns with UK scheme)	Option Two: Royalty payments are claimable indefinitely (recommended by Te Rōpū Toi Māori)
Benefits to artists	0 Most right holders should be able to be located close to the date of sale. A fixed term may result in right holders missing out on royalty payments. The collection agency would need to retain royalties to protect against future liability, which could reduce the benefits of the cultural fund (if there is one), but this would be limited as all funds could be transferred after six years.	0 May benefit artists and estates if they are not aware at the time of sale that the work has been sold. Could reduce the benefits of the cultural fund (if there is one), as the collection agency would need to retain royalties to protect against future liability. Unlike with the counterfactual, all funds could not be transferred after six years, so there would be a significant cumulative effect of lost cultural fund revenue over the years.
Administration costs	0 Some admin costs would be incurred by the need to hold royalties for this length of time. The agency would be required to use its “best endeavours” ¹³ to locate and distribute royalties to right holders.	- Greater admin costs than the counterfactual due to having to manage unclaimed royalties indefinitely. Engagement with entities experienced in administering royalties suggests this could include challenges with calculating the interest and tax on royalty payments if they are claimed many years after the sale of the artwork.
Flexibility / sustainability	0 This option would not have any specific impacts on the scheme’s flexibility or sustainability.	- - Would create a growing pool of money that could not be distributed through the cultural fund as it would need to be retained in case artists came forward to claim their royalty. During engagement a number of stakeholders raised concerns about the financial liability this could create, and whilst definitely manageable, this perception could deter prospective collection agencies from wanting to take on the role. If the collection agency does not retain sufficient funds to pay out unclaimed royalties, this could impact the scheme’s long-term sustainability.
Te Tiriti o Waitangi considerations	0 Because kaitiaki relationships between Māori artists and their work are generally considered to exist in perpetuity, a time limit on when this right can be exercised would not align with a te ao Māori world view.	++ An indefinite royalty claiming period would more fully recognise the perpetual connection between Māori artists and their work. Te Rōpū Toi Māori supported this option.
Overall assessment	0	-1

¹³ “Best endeavours” (or best efforts) is a legal term, often found in commercial contracts, which places upon a party the onus of making every reasonable effort to achieve the required objective.

102. Holding unclaimed royalties for a fixed term is more administratively practical and sustainable in the long term, as it ensures the collection agency has no long-term financial liability emerging from unclaimed royalties and avoids difficulties with interest and tax calculations. However, holding royalties indefinitely more fully recognises the relationship between artists and their art and is more closely aligned with a te ao Māori world view.
103. Holding royalties indefinitely would limit the impact of the cultural fund because significant sums of money would not be able to be transferred to the cultural fund or protect the agency's future financial liability. This amount would continue to grow over time and would represent a large amount of lost revenue that could have been spent supporting artists who would not otherwise benefit from the scheme.

Options for the establishment of a cultural fund

104. If funds are declined or the rights holder cannot be located, a cultural fund could be established to ensure these royalties still benefit the artistic community. This would also create an opportunity to deliver more equal benefits to all demographics from the ARR scheme. ARR schemes tend to benefit established artists who sell their work through art market professionals and whose works are resold for higher prices and are therefore more likely to be eligible for royalties. Available data and evidence from engagement suggests that Māori, women, Pacific and disabled artists, and artists from ethnic communities, may receive less royalties than artists in general because of these factors.
105. Under the counterfactual, the regulations would be silent on a cultural fund. This would allow the collection agency maximum flexibility in how to manage undistributed royalties. Option Two would empower the collection agency to establish, operate, and determine the structure of a cultural fund. The collection agency would be subject to requirements to engage with the artistic community and with Māori when carrying out this work. Under Option Three, regulations would detail the structure and operation of a cultural fund if one is established.

	Counterfactual: The regulations are silent on a cultural fund	Option Two: Regulations enable the collection agency to establish and operate a cultural fund, with operation and detail of the fund to be managed by the collection agency (preferred)	Option Three: Regulations include the details of how the cultural fund would work and be structured
Benefits to artists	0 Unlikely that there would be a cultural fund so artists who do not receive royalties would not benefit from the scheme.	++ Would create an opportunity for artists who do not receive royalties to still benefit from the scheme. Allowing the collection agency flexibility in how the fund is designed and managed would create space for ongoing engagement with and input of artists in how funds are allocated, likely leading to a highly effective fund.	+ Would create an opportunity for artists who do not receive royalties to still benefit from the scheme. Regulating details of the fund would allow government to ensure targeted support in line with the scheme's objectives. Unknowns about how much money would be in the fund and who will administer it could mean the structure of the fund does not meet artists' needs.
Administration costs	0 Would allow the collection agency to determine a process for dealing with undistributed funds in a way that best suits their existing operating model and expertise, within the parameters allowed for in legislation.	- If a fund is established, would require the collection agency to design the fund in consultation with stakeholders and publicise and distribute it. This would have admin costs for the agency. However, the collection agency would be empowered to do this in a way that best suited their existing operating model and expertise, which would best ensure a cost-effective model is developed.	- -Could limit the ability of the collection agency to manage funds efficiently, particularly if the regulated fund structure is complex. Because regulations will be in place before the collection agency is appointed, the structure of the fund cannot be designed to suit the collection agency's capability, which could mean the collection agency has to build staff capability to manage the fund as intended. Likely to lead to higher admin costs.
Flexibility / sustainability	0 No adverse impacts on sustainability. Would provide the collection agency with the most flexibility to manage unclaimed royalties.	0 No adverse impacts on sustainability. The regulations would set out what happens in the event there is no cultural fund.	- Less flexible because this option prescribes how the cultural fund would be structured. Because regulations will be in place before the collection agency is appointed or the size of the fund is known, these aspects could not be accounted for, meaning this option is likely to be less sustainable. Regulations may need to be amended to change the structure of the fund if this causes problems.
Overall assessment	0	1	-2

106. The counterfactual would give the collection agency maximum flexibility to manage undistributed royalties. Under this option the biggest incentive would be for the collection agency to use the funds to cover its own administrative costs. There would be little incentive to set up a cultural fund, given the extra costs required to administer such a fund. The absence of a cultural fund would reduce the benefits of the scheme for demographics whose art is more commonly sold privately, whose art tends to sell for lower prices, and/or who face other structural barriers to exhibiting and selling art.
107. Under Option Three, regulations would detail the structure and operation of a cultural fund if one is established. This would allow for support to be targeted but could be difficult for the collection agency to manage. Regulating the cultural fund in this way would be impractical before the size of the fund and who will administer it are known and would make it difficult to amend the fund's structure if it is not delivering the expected benefits.
108. Option Two is the preferred option because it guarantees benefits for artists who wouldn't otherwise be eligible for the scheme, and because it would empower the collection agency to establish, operate, and determine the structure of a cultural fund in the most cost-effective way. The collection agency would also be subject to requirements to engage with the artistic community and with Māori when carrying out this work, which is likely to deliver the best outcome for artists.

Options for the use of royalties that cannot be distributed

109. A process is needed to determine how funds that cannot be distributed to artists are used if there is no cultural fund.
110. The counterfactual option is that the collection agency would be free to decide what to do with undistributed royalties in the event there is no cultural fund. The counterfactual option aligns with the UK scheme, where the use of undistributed royalties is not regulated, but rather the collection agency chooses how it manages this money.¹⁴
111. Option two would enable the collection agency to keep unclaimed royalties to use for its own administrative costs (the Australian legislation allows the collection agency to retain unclaimed royalties if they cannot be returned to the liable parties as under Option two).
112. Option three would require undistributed royalties to be returned to liable parties. If these could not be found then the collection agency may retain the royalties to help fund its administrative costs.

¹⁴ At 2021 AGM, the UK collection agency DACS voted to donate unclaimed royalties to the Art360 Foundation if not claimed within six years.

	Counterfactual: If there is no cultural fund the collection agency can decide what to do with undistributed royalties	Option two: Keep payments to be used for administrative costs	Option three: Payments would be returned to the liable party, and, if the party could not be found, used for administrative costs (preferred)
Benefits to artists	0 The collection agency would be able to spend the money how it chooses, which may or may not benefit artists. Artists may be concerned about the lack of transparency in this option and the lack of a guarantee that the money will be spent on benefiting the artistic community.	0 Having extra funds for admin costs could enable the collection agency to provide a better service to eligible artists. Removes the possibility of using the money to support artists who would not otherwise benefit from the scheme. Is more transparent than the counterfactual.	0 No benefit for artists if the royalties are returned to liable parties. Guaranteed minor benefits in the cases where it is used to cover the admin costs of the scheme. Is more transparent than the counterfactual.
Administration costs	0 Collection agency has full flexibility to use the funding to meet its immediate needs, including meeting administrative costs.	0 Creates an extra pool of funds for the collection agency to use to meet admin costs.	- Limits the ability of the collection agency to use undistributed royalties to meet its needs and creates additional costs related to returning payments to liable parties. However, if liable partners can't be found does create an extra pool of funds for the collection agency to use to meet admin costs.
Flexibility / sustainability	0 Most flexible option, as collection agency would have full discretion as to how undistributed royalties are used. However, participants in the scheme likely to be concerned about the lack of transparency and accountability in this option, which could have a negative impact on compliance with the scheme.	- Less flexible than the counterfactual because it puts restrictions on how undistributed royalties can be used, but extra funds for administration could help the sustainability of the scheme. Art market professionals and buyers and sellers likely to be frustrated that there is no option for undistributed royalties to be returned to the liable party, and this could undermine compliance with the scheme.	+ Less flexible than the counterfactual because it puts restrictions on how undistributed royalties can be used. Provides extra funds for administration in cases where liable parties can't be found, helping increase the sustainability of the scheme. Providing for royalties to be returned to liable parties in the first instance is likely to increase the credibility of the scheme and trust in the scheme among art market professionals and buyers and sellers, and act as an incentive to comply with the scheme, which is key to the sustainability of the scheme.
Overall assessment	0	-1	0

113. Despite Option Three scoring the same as the counterfactual, Option Three is preferred because it sets clear parameters around what will happen to funding if there is no cultural fund is established. This transparency and accountability is likely to be appreciated by participants in the scheme and enhance the credibility of, and trust in the scheme.

Te Tiriti o Waitangi implications of the preferred options

114. The establishment of a cultural fund would provide some benefit from the scheme to artists who would not otherwise benefit from the scheme (for example, emerging artists, artists whose work sells for lower prices or artists who do not sell their work through art market professionals). This could have particular benefits for emerging Māori artists. The structure and criteria of the fund could be used to help ensure the funds reach artists who need them. For example, it could be used to fund internships or residencies for emerging artists. The collection agency would be required to determine the structure and purpose of the cultural fund in consultation with right holders and the wider artistic community and would specifically be required to engage with Māori in this work.
115. The regulations discussion document proposed that unclaimed royalties would be claimable indefinitely, in line with the recommendation of Te Rōpū Toi Māori who considered that imposing a time limit on claiming the royalty would be inconsistent with te ao Māori world view.
116. However, some submitters, MBIE, and the Treasury raised concerns about this option, including that holding royalties indefinitely would create a significant and increasing financial liability on the collection agency due to the need to retain records indefinitely. This could impact the scheme's long-term sustainability and disincentivise organisations to take on the role of collection agency. Submitters also suggested that the funds would more productively benefit artists through a cultural fund.

What are the marginal costs and benefits of the preferred option?

117. The marginal costs and benefits of the preferred options are compared to the UK counterfactual, which is consistent with the options analysis above. It is not feasible to compare the preferred option to an option of taking no action, as an ARR scheme is required by the NZ-UK Free Trade Agreement and a Bill setting out the key policy settings and empowering supporting regulations is progressing through the House.
118. The RIS developed for the legislation analyses the marginal costs and benefits of establishing an ARR scheme.
119. Note that Manatū Taonga does not have access to complete 2022 domestic art market sales figures to inform the analysis in this RIS

Affected groups	Comment	Impact	Evidence certainty
Additional costs of the preferred option compared to the counterfactual			
Regulated groups			
Auction houses and dealer galleries	<p>The preferred threshold of \$1,000 (excluding GST) is lower than the counterfactual option of the UK scheme (approx. \$1,600). This means art market professionals will likely have slightly higher administrative costs as there will be a higher volume of sales to report on due to a lower threshold.</p> <p>The difference in administrative costs at different thresholds can be demonstrated to a certain extent using data from the reviews of the Australian and UK schemes.</p> <p>The review of the UK scheme with a threshold of \$1,600 estimated the median time spent on administration per quarter was 95 minutes, costing £26.40 (approx. \$50 NZD) when adjusted to the 2021 UK median wage.</p> <p>The Australian scheme has a threshold of approx. \$850 NZD (\$1,000 AUD inclusive of GST). The review of that scheme estimated an average of three hours per quarter for administration, costing \$90.68 AUD (approx. \$98 NZD) when adjusted to the 2021 Australian median wage.</p> <p>However, it is not possible to determine if these costs would translate to the Aotearoa New Zealand context.</p>	Low	Medium – based on data from reviews of the UK and Australian schemes and then adjusted for wage inflation. However, it is important to note these costs would not necessarily translate to the Aotearoa New Zealand market as all art markets function differently.
Right holders (artists and their successors)	The proposed administrative fee to be deducted by the collection agency from each royalty collected is 20% which is higher than the counterfactual of 15%. This will mean right holders will receive a smaller net royalty overall as they would be paying a marginally higher administrative fee.	Approx. \$43,000 in admin fees per year based on 2018-2020 auction house data, an average of approx. \$26 per sale	Medium – based on data from Australian Art Sales Digest, comprising data on NZ auction house sales (estimated to be approx. 80% of resales in NZ).
Regulators			

Collection agency	A threshold of \$1,000 will mean more sales qualify for a royalty which will likely mean marginally increased administrative costs for the collection agency. The impact of any additional administrative costs for the collection agency cannot be readily quantified, but is likely to be low compared to the counterfactual threshold of approx. \$1,600.	Low	Medium – impacts cannot be readily quantified.
Crown	The establishment of a cultural fund, if the collection agency chooses to establish one, may have some additional setup costs to the Crown if a Budget bid is sought. These costs were not included in the funding sought through Budget 2023 as no decisions on a cultural fund had been made. 9(2)(f)(iv) [REDACTED] [REDACTED] [REDACTED]	9(2)(f)(iv) [REDACTED]	Medium – 9(2)(f)(iv) [REDACTED] [REDACTED] [REDACTED]
Total costs			
Total monetised costs	Costs to right holders from higher administrative fee of 20%. Costs to the Crown to establish a cultural fund.	Approx. \$44,000 per annum 9(2)(f)(iv) [REDACTED] [REDACTED]	Medium
Total non-monetised costs	Administrative impacts for art market professionals and the collection agency from the lower threshold of \$1,000	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups			

¹⁵ For example, designing the fund in consultation with right holders and other stakeholders from the visual artistic community will be more costly than the agency designing the fund itself without stakeholder input.

Right holders (artists and their successors)	<p>More right holders would receive a royalty with a threshold of \$1,000 compared to the counterfactual threshold of approx. \$1,600.</p> <p>Based on 2018-2020 auction house data, 409 additional artists (an increase of 18%) would have benefitted from this lower threshold.</p> <p>This would have equated to an additional approx. \$16,800 in royalties being distributed compared to the counterfactual.</p>	18% more artists and approx. \$16,800 per annum from 2018 to 2020	<p>Medium</p> <p>Based on data from Australian Art Sales Digest, comprising data on NZ auction house sales (estimated to be approx. 80% of resales in NZ).</p>
Visual arts sector	<p>Any undistributed royalties could be distributed to the broader visual arts sector through a cultural fund with the purpose of supporting visual artists' career sustainability.</p> <p>The impacts of a cultural fund cannot be readily quantified as this would likely fluctuate depending on how many royalties are not distributed.</p>	Low	Low – impacts cannot be readily quantified.
Others (e.g. wider government, consumers)			
Crown	The lower threshold of \$1,000 means more artists are receiving royalties which is taxable income. The Crown would therefore expect to receive marginally more tax revenue compared to the counterfactual.	Low	Low – impacts cannot be readily quantified as tax rates for the target group are not known.
Total benefits			
Total monetised benefits	Approx. \$16,800 in additional royalties distributed to right holders per annum with a lower threshold of \$1,000 compared to the counterfactual.	\$16,800 per annum	Medium
Total non-monetised benefits	<p>18% more artists (409) receiving royalties per annum with a lower threshold of \$1,000.</p> <p>Wider visual arts community benefits from the distribution of undistributed royalties through a cultural fund.</p> <p>Marginally increased tax revenue to the Crown from a lower threshold of \$1,000.</p>	Low – Medium	Low – Medium

Delivering an option

How will the preferred options be implemented?

120. Regulations will commence when the Act commences; the commencement date of the Act will be set through Order in Council no later than 1 December 2024. The commencement date is to be set through Order in Council because the legislation cannot commence until the collection agency has been appointed and relevant systems and processes are in place for the scheme to begin operating.
121. The collection agency will be responsible for the overall operation of the scheme. Manatū Taonga will provide monitoring and oversight.
122. The Bill enables the Minister to appoint a non-government, not-for-profit organisation as the collection agency by notice in the *New Zealand Gazette*.
123. When the collection agency is appointed, a contract for services between the agency and Manatū Taonga will set out:
 - a. the responsibilities and obligations of the collection agency
 - b. agreed outcomes and performance measures
 - c. detail on monitoring arrangements.

Communications and engagement with participants

124. The Bill requires the collection agency to be inclusive of, and recognise the different needs of, all peoples in New Zealand. Regulations will require the Minister to be satisfied that a prospective collection agency has the capability to meet this obligation before appointing it as the collection agency, for example, through assessing whether and to what extent the agency can provide accessible information about the scheme.
125. Manatū Taonga and/or the collection agency would run a campaign to publicise the scheme when it comes into effect. This would include information about when the scheme is commencing; rights and obligations of participants in the scheme, including right holders, art market professionals, and buyers and sellers of visual art; and could include information about any cultural fund/s that are established. Detailed information about the scheme would also be made available online, ideally on both the Manatū Taonga website and that of the collection agency.
126. Regulations will require the collection agency to:
 - a. ensure that participants in the scheme are informed of key decisions
 - b. seek feedback on any significant changes to the scheme's operation
 - c. consult with rights holders and the wider artistic community on the structure and purpose of the cultural fund, and
 - d. engage with Māori before making key decisions or significant changes to the scheme, including when determining the structure and purpose of the cultural fund.
127. The collection agency would also need to engage on an ongoing basis with scheme participants to ensure rights and responsibilities under the scheme continue to be common knowledge within the sector.

Risks and mitigations relating to implementation of the scheme

Risk	Mitigation
<p>If any aspects of the regulations are poorly understood or are considered to place an unfair burden on art market professionals, buyers and/or sellers, compliance may be negatively impacted.</p>	<p>To mitigate this, the collection agency will 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 right holders' rights are.</p>
<p>The scheme places significant requirements on the collection agency. Although funding of \$954,000 over four years has been allocated through Budget 2023 to meet the implementation and initial operating costs of the ARR scheme, there is a risk that additional funding may be needed to enable the collection agency to fulfil its obligations.</p>	<p>For the first three years of the scheme the collection agency will have the dual revenue streams of its establishment funding and revenue from the administrative fee. This should help the collection agency cover any additional costs during this period. However, it will also limit its ability to use the administrative fees collected during this period to build a buffer to cover fluctuations in administrative take in outyears. This risk is mitigated by the fact that the administrative fee can be increased if needed. In the event that the administrative fee could not be increased, further Crown funding could be sought.</p>
<p>Due to the significant requirements placed on the collection agency and relatively low funding, it is also likely that the capability to meet these requirements will be limited to a small number of agencies. There is a risk that no credible collection agency comes forward, and that the scheme would not be able to operate.</p>	<p>Manatū Taonga has mitigated this risk by engaging publicly on both the Bill and the proposals for regulations, enabling feedback to be provided from organisations in Aotearoa that might apply for the role of collection agency, as well as engaging with overseas collection agencies on the proposals, to ensure these proposals are operationally feasible. In the case that a collection agency is not appointed, government will consider the most appropriate interim option to manage the scheme, including if the Crown can manage the scheme until an appropriate agency can be appointed. Assistance could also be provided to build the needed capability in an existing organisation to manage the scheme in the longer term</p>
<p>Through Budget 2023, funding was not allocated to support monitoring of the scheme. This lack of funding could affect the quality of monitoring particularly in relation to how the scheme is impacting Māori, where an additional level of cultural capability is required.</p>	<p>Manatū Taonga will engage with Te Rōpū Toi Māori to support building cultural capability and understanding within the Ministry's monitoring functions.</p>

How will the scheme be monitored, evaluated, and reviewed?

128. The collection agency has duties and functions set out in legislation, meaning 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 Crown funding for set-up costs so will need to be monitored to ensure its use of public money is efficient and effective.
129. Manatū Taonga will be the monitoring agency for the scheme. Manatū Taonga already monitors a range of sector bodies and is well-placed to take on this new function.
130. The collection agency will be required to keep detailed records of how it operates the scheme. This enables both the collection agency and Manatū Taonga as the monitoring agency 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.
131. The collection agency will be required by regulations to keep records including:
- a. financial records. This would include operating expenses, administrative fees collected, transactions of artworks which require a royalty, royalties collected and distributed, and payments made to the cultural fund
 - b. how the scheme is impacting artists, including the specific impacts on Māori and Pacific artists. This will include:
 - i. how many Māori artists and Pacific artists received a royalty and the value of those royalties
 - ii. how the collection agency is engaging with Māori before making key decisions or significant changes to the operation of the scheme
 - iii. how many royalties were declined by artists or their estates
 - iv. royalties paid into the cultural fund and how they are being used
 - v. compliance with the scheme, including any disputes raised, how they have been resolved, and any enforcement action taken by the collection agency
 - vi. Māori and Pacific artists' use of the complaints process and any enforcement action taken on their behalf.
132. Additional, more specific data collection may be specified in operational documents, for example the contract for services of the collection agency.
133. Evaluation of the scheme's impacts will also be informed by Manatū Taonga's regular engagement with the visual arts sector.
134. The collection agency could collect some information on artists participating in the scheme via a register which artists could voluntarily sign up to, and this could be used to support evaluation of the scheme's impacts. This would be an operational matter. The contract for services would be used to set out details of the register, for example to specify what data it would collect or require the collection agency to create and maintain the register.
135. A review would be conducted within five years after the scheme commences to determine if any changes are needed to improve the efficiency and effectiveness of the

scheme. This review would be an operational matter, conducted by Manatū Taonga as the monitoring agency, and would be informed by engagement with right holders, art market professionals, and public institutions. The scheme could be reviewed earlier, for example if it is not delivering the intended benefits to artists, or if it becomes clear that the policy settings as implemented are preventing the scheme from becoming self-sustaining.

136. The collection agency's appointment being revoked, as discussed above, could also prompt a review of the scheme.

PROACTIVELY RELEASED

Appendix One: Cost recovery implications for the administrative fee

Policy rationale: Why a user charge, and what type is most appropriate?

1. A user charge is proposed to meet the collection agency's administrative costs and so that the artist resale royalty scheme can be self-sustaining in the long term. It is common practice internationally to deduct an administrative fee from each royalty collected in order to meet the costs of collection and distribution.
2. The Bill provides that the collection agency is entitled to retain a percentage of each royalty it collects, with this fee to be set in the supporting regulations. An administrative fee is considered appropriate because it is a fee in exchange for services (the service being the collection and distribution of the royalty on behalf of the right holder). All international ARR schemes we investigated had a percentage-based administrative fee, though the amount of the percentage varied significantly.¹⁶
3. The service of collecting and distributing the royalty primarily benefits artists, who receive the royalty and do not need to manage the right themselves.
4. The collection and distribution of the royalty is a club good, i.e. people can be excluded from its benefits at a low cost (via the threshold sale price) but its use by one person does not detract from its use by another¹⁷. This means it is feasible to charge for the collection agency's services in this area.
5. As the time associated with collecting and distributing each royalty is likely to be similar, a fixed administrative charge is consistent with Treasury's cost recovery guidelines¹⁸. However, an equitable approach justifies a percentage-based charge, as the right holders who benefit the most from the scheme will also contribute the most to its administration. This means that artists whose work sells for higher prices help subsidise the collection of royalties of lower value sales.
6. Funding of \$954,000 over four years has been allocated through Budget 2023 for the establishment and initial operation of the scheme. Thus in initial years, only partial cost recovery would be needed to fund the service. However, it is the Government's expectation that the administrative fee eventually fully recovers the costs of royalty collection and distribution so that the scheme will be self-sustaining in the long term and will not require ongoing government funding.

The level of the proposed fee and its cost components

7. To cover the collection agency's operating costs, a charge of around 15-25 percent of all royalties is likely to be needed. Some international regimes impose a lower charge (for example, the German scheme has a 12 percent fee), but Aotearoa New Zealand's small art market means a higher charge is required. The Finnish scheme's 25 percent administrative fee was the highest fee of the international schemes Manatū Taonga investigated.
8. As outlined in this RIS, we consider a 20 percent administrative fee strikes an appropriate balance between generating revenue for the collection agency so the

¹⁶ This includes the UK, Australian, Danish, German, French, Icelandic and Finnish ARR schemes; administrative fee percentages ranged from 12 percent (Germany) to 25 percent (Finland).

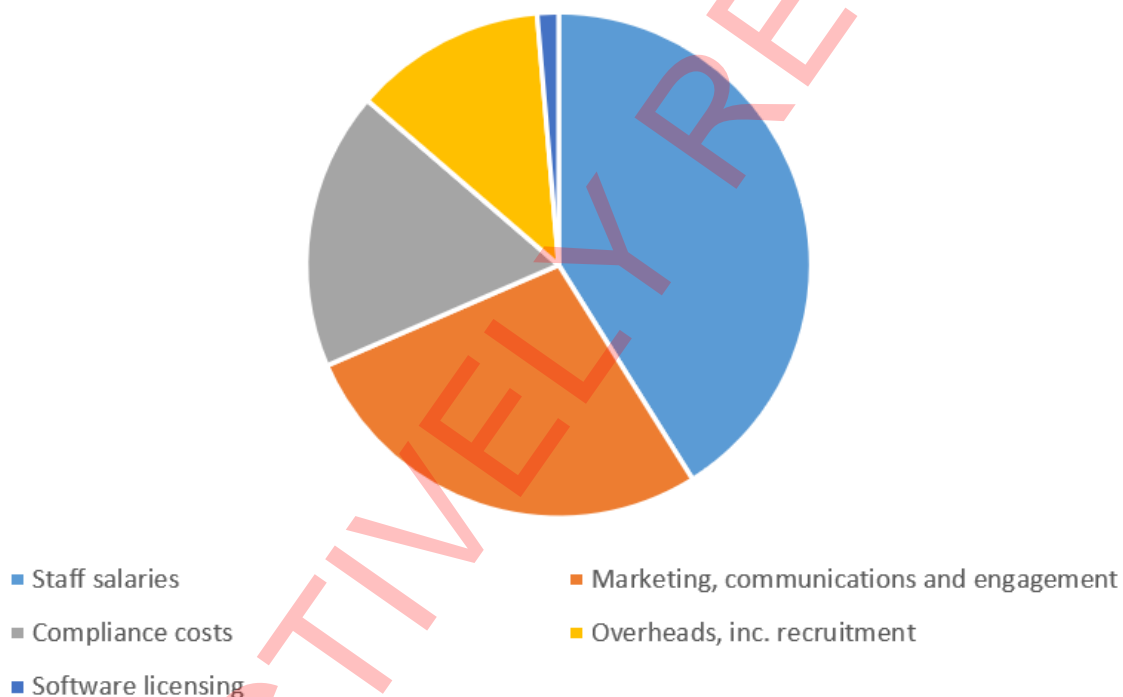
¹⁷ [Guidelines for Setting Charges in the Public Sector - April 2017](#), Treasury.

¹⁸ [Guidelines for Setting Charges in the Public Sector - April 2017](#), Treasury.

scheme can ultimately be self-sustaining and ensuring that right holders receive as much of the royalty as possible.

9. The collection agency's ongoing operating costs are estimated at around \$365,000 a year which includes:
 - a. staff salaries of \$150,000 per annum (41 percent)
 - b. marketing, communications and engagement of \$100,000 per annum (27 percent)
 - c. compliance costs, e.g. reporting and monitoring of \$65,000 per annum (18 percent)
 - d. overheads, including recruitment costs, of \$45,000 per annum (12 percent)
 - e. software licensing costs of \$5000 per annum (less than one percent)¹⁹

Figure 1: Breakdown of scheme costs



The expected revenue which could be generated by the scheme

10. It is difficult to estimate the revenue in administrative fees which would be generated by the scheme. This is because the art market fluctuates over time, and it is hard to predict market trends with any degree of certainty.
11. Obtaining an accurate picture of the Aotearoa New Zealand secondary art market is also challenging. Data on Aotearoa New Zealand auction house sales from 2015 to 2021 is collected by the Australian Arts Sales Digest (AASD) and Manatū Taonga has purchased this data to inform modelling. Data for 2022 auction house sales is held by

¹⁹ Note that these percentages have been rounded to the nearest one percent, so do not add to 100 percent.

the AASD, but Manatū Taonga does not have access to this data. However, indications are that auction house sales for 2022 were high and followed a similar trend to 2021.

12. We have no visibility of other resales in Aotearoa New Zealand, for example, sales through dealer galleries, second-hand dealers, art consultants etc. Resales to and from public museums, galleries, archives and libraries will also attract a royalty under the legislation but no data is available on these sales.
13. The AASD has previously estimated auction house sales comprise approximately 80 percent of the secondary art market. We have used this figure to extrapolate a further 20 percent in sales value on top of the value of auction house resales.
14. The table below sets out the estimated royalties which would have been collected from art market resales from 2017 to 2021 and the revenue in administrative fees which would have been generated.

Table 2: Estimated revenue from administrative fees based on sales 2017-2021

	2021	2020	2019	2018	2017
Gross royalties from auction house sales with a royalty rate of 5% and a threshold of \$1,000	\$2,372,000	\$1,010,000	\$1,091,000	\$1,045,000	\$1,160,000
Estimated gross royalties from other art market sales ²⁰	\$593,000	\$253,000	\$273,000	\$261,000	\$290,000
Estimated total art market sales	\$2,965,000	\$1,263,000	\$1,364,000	\$1,306,000	\$1,450,000
Administrative fee at 20%	\$593,000	\$253,000	\$273,000	\$261,000	\$290,000
Net revenue gain or loss assuming operating costs of \$365,000	+\$228,000	-\$112,000	-\$92,000	-\$104,000	-\$75,000

15. Based on only auction house sales figures for 2021, the scheme would have generated enough revenue to be self-sustaining with a 20 percent administrative fee. However, 2021 was a record sales year and may prove to be an outlier in the long term. Trends over the last 20 years show that while the market has grown over time, it also fluctuates and there is often a dip in the years after a particularly high number and value of sales is recorded.

²⁰ This assumes auction house sales are approximately 80 percent of the market.

16. Total estimated art market sales from 2017-2020 would have generated an average of \$269,250 with a 20 percent fee. This would not have been sufficient to sustain the scheme.
17. However, during the establishment period and initial operating years, the collection agency will be receiving Crown funding as well as collecting revenue through administrative fees.²¹ This will enable the agency to build financial reserves which could be used to cover any future shortfalls between revenue and annual operating costs.
18. The art market is expected to grow gradually over time, which would generate more revenue through administrative fees for the collection agency and eventually result in the scheme becoming self-sustaining.

Effect on revenue if assumptions change

19. Forecasting future sales volume and value is difficult due to the unpredictable fluctuations of the art market. The small size of Aotearoa New Zealand's market also means fluctuations are more noticeable and likely to have a greater impact.
20. Once the scheme has been operating for a few years, Manatū Taonga and the collection agency will have a better view of revenue generated by the administrative fee and the point at which the scheme can be expected to be self-sustaining.
21. We have made conservative assumptions about the future size of the secondary art market, as we are cautious of overestimating how much revenue the scheme might expect to generate and therefore underestimating how much Crown funding might be required over the long term.
22. If trends in market growth in 2021 and 2022 continue, the scheme will generate more revenue and be self-sustaining earlier than in the case of a return to 2018-2020 sales figures.
23. Conversely, if there is an unexpected period of low art sales (for example, due to a recession), the scheme would generate less revenue and may need additional Crown funding.

²¹ In the initial years, we expect revenue from the administrative fee to be lower than outlined in Table 2. This is because the scheme will be in its early phase and the art market will likely still be adapting to the new regime and its associated requirements.

Appendix Two: How advisory groups' recommendations are reflected in preferred options

General Advisory Group recommendation and rationale	Te Rōpū Toi Māori recommendation and rationale	Preferred option identified through regulatory impact analysis
Threshold sale price		
<p>The majority of the group agreed the threshold should be as low as possible, ideally \$500. However, art market professional representatives recommended a high threshold (at least \$2,000) to make the scheme easier to administer, and to focus the scheme on professional artists.</p>	<p>The threshold should be set at \$1,000.</p>	<p>The regulations will require a sale price threshold equal to or over \$1,000.</p>
Administrative fee		
<p>The administrative fee should be deducted from the royalty, not added on.</p>	<p>The group considered the administrative fee should not be deducted from the five percent royalty. Two options were proposed:</p> <ul style="list-style-type: none"> • Government should fund the scheme in perpetuity so that an administrative fee is not necessary. However, note that a key objective of the scheme is for it to be self-sustaining, so ongoing Government funding is not viable. • Add the administrative fee on top of the five percent royalty as an additional one percent on the sale price. 	<p>Administrative fee is deducted from the five percent royalty payment.</p>
Operation of collection agency		
<p>Co-governance and co-management should not be a feature of the scheme. The group did not support the Māori Advisory Group's recommendation for co-chairs and two streams of leadership. Instead, it recommended having requirements around Māori involvement in governance and making use of</p>	<p>Two options were proposed:</p> <ul style="list-style-type: none"> • The collection agency should be a Māori-led organisation. • The collection agency should manage the collection of the resale royalty and cultural fund through a bi-cultural model with co-governance 	<p>Regulations require the Minister to be satisfied that the prospective collection agency can uphold the obligation to acknowledge and respect the role of Māori as tangata whenua and provide culturally</p>

governance subcommittees to support strategic oversight of the scheme.	<p>and co-management at its core, including co-chairs, two streams of leadership and two streams within the cultural fund.</p> <p>It should be required, as a condition of contract for services, that there is appropriate knowledge and capability in place to ensure the scheme is effective for Māori artists.</p>	appropriate support to Māori artists, before making a decision on the appointment of the collection agency.
There should be a dispute resolution process.	No specific recommendation.	The regulations will require the collection agency to have, if it does not already, a formal complaints process. The collection agency is subject to the Ombudsmen Act 1975 in regards to its functions under the Bill.
<p>There should be strong reporting and monitoring requirements around the impact of the scheme on Māori and Pacific artists.</p> <p>Pacific artists should be appropriately supported and the collection agency should have a clear understanding of how the scheme is impacting Pacific artists.</p>	<p>There should be specific reporting requirements related to how the scheme is impacting Māori artists, including how they are benefiting and how the cultural fund is supporting them.</p> <p>Monitoring should ensure the collection agency is giving effect to principles set out in the Act, specifically that Māori are participating equitably in the scheme and that they are consulted on changes to the scheme.</p>	The regulations include general monitoring and reporting requirements, and in addition, require the collection agency to keep specific records on how the scheme is impacting Māori and Pacific artists.
Unclaimed royalties and cultural fund		
There should be a time limit on when an unclaimed royalty can be subsequently claimed by the right holder.	There should be no time limit on when an unclaimed royalty can be subsequently claimed by the right holder. Having a time limit impinges on the right and is not consistent with tikanga.	The regulations will require royalty payments, where the right holder cannot be located, to be claimable for a fixed term of six years.

Appendix Three: Summary of submissions from public consultation on the Resale Right for Visual Artists Regulations discussion document

There were 27 submissions on the Resale Right for Visual Artists Regulation proposals. Twenty-two of these submissions were received through the public consultation on proposals for the regulations. The remaining five were submissions on the Bill that commented on aspects of the regulations.

Of the 22 submissions received through the public consultation process, the majority (18), commented on one or more of the specific proposals for the regulations. The remaining four either expressed general support, or opposition to the scheme.

Some proposals were more heavily supported than others. For example, of the 12 submitters that commented on the proposals for a cultural fund all supported the proposal. In contrast, of the 14 submitters that commented on the proposed \$1,000 minimum threshold for eligible works, 9 supported the threshold and 5 opposed the threshold.

Despite the variation across different proposals, all proposals presented for public consultation were supported by the majority of submitters.

Feedback in support of the proposals included that:

- the \$1,000 eligibility threshold is inclusive and will enable a wide range of visual artists to benefit from the scheme
- the proposed 20 percent administrative fee is fair and balanced
- the requirement for prospective collection agencies to demonstrate how they would include Māori in their governance and decision-making will help ensure the scheme is supportive of, and benefits Māori visual artists
- the proposal to allow right holders to claim a royalty indefinitely is in line with te ao Māori perspective, where tangata whenua never cede guardianship over taonga to ensure the preservation and protection of that taonga
- the proposed areas of reporting will be useful for considering changes and improvements to the scheme as it is implemented and evolves over time
- the explicit inclusion of Māori and Pacific statistics in the reporting will better quantify the impact of the scheme
- Manatū Taonga has the relevant sector expertise needed to monitor the scheme
- the proposed dispute resolution process is balanced and fair and a welcome alternative to legal action
- the proposed cultural fund recognises and supports the aims of the scheme and could provide valuable support for emerging artists.

Feedback which expressed concern about the proposals included that:

- the \$1,000 threshold is too low and may dissuade collectors from buying visual artworks, as low-value artworks on the secondary market frequently incur a loss when sold
- the administrative fee should be a fixed fee and not a percentage, as it does not cost more to collect and distribute a royalty on higher value works
- the proposal to allow rights holders to claim the royalty indefinitely would create significant and increasing financial liability for the collection agency over time and would limit the benefits of the cultural fund
- it may be difficult to provide accurate data on artists' ethnicity

- there shouldn't be a special focus on Māori and Pacific visual artists
- disputes in relation to the resale scheme are not necessarily amenable to mediation and the cost of mediation could be prohibitive for some artists
- it is important that regulations made under the Bill do not create precedents or unrealistic expectations for the review of the Copyright Act
- the costs of administering a cultural fund are significant and this should be considered when considering the collection agency's funding.

PROACTIVELY RELEASED

Appendix 4: Changes to proposals for regulations based on public submissions

Recommendation	Submitter	Reasoning/analysis	How we have incorporated this into the proposals for the regulations
<i>Collection and distribution of royalties</i>			
Timeframe for the collection agency to distribute royalties should be set in regulations	European Visual Artists	<p>The European Visual Artists submission noted that in the EU, collective management organisations (CMOs) are obliged to distribute all revenues collected within nine months of collection, unless there are objective reasons for the delay, for instance when the CMO is not informed in time or if information is incomplete.</p> <p>Officials consider that specifying that the collection agency must distribute royalties in a timely manner would enable the scheme to operate more efficiently but do not propose adding in a timeframe, as the collection agency is best placed to determine this (and is required to include it in its collection and distribution policy).</p>	We have added in a requirement that the collection agency must distribute the royalty to the rights holder or holders in a timely manner.
There should be a timeframe within which parties must pay the royalty to the collection agency, and a definition of what constitutes a 'qualifying resale completion.'	Copyright Licensing New Zealand's submission on the Bill	CLNZ noted in its submission on the Bill that there is no definition of what constitutes a 'qualifying resale completion' or of a deadline for payment to the collection agency. This submission was supported by Copyright Agency Ltd. CLNZ noted that the absence of clarity on this point could be taken advantage of by parties who are otherwise liable.	Proposals for the regulation now require payment of the royalty amount to the collection agency to be made within 60 days of the completion of the sale. The definition of a 'qualifying resale completion' will be addressed through an amendment to the Bill.
<i>Declined and unclaimed royalties</i>			
There should not be an indefinite time period for unclaimed royalties.	Melissa Laing, Copyright Licensing NZ, Bill	Submitters raised concerns about enabling unclaimed royalties to be held indefinitely by the collection agency, noting it would create significant and increasing financial	Regulatory proposals outline that unclaimed royalties would be held by the collection agency for a period of six

	submission by Copyright Agency Ltd	liability for the collection agency, which could impact the long-term sustainability of the scheme. Officials notes that this burden on the collection agency could prevent organisations from wanting to be considered for appointment as the collection agency.	years, which aligns with the Australian and UK schemes.
<i>Record-keeping and monitoring</i>			
Collection agency should be required to regularly publish information relating to its non-financial records (or clarify that this is required)	NZ Law Society	NZLS noted that including a requirement in the regulations for the collection agency to regularly publish information relating to its non-financial records would increase accountability and transparency about the overall operation of the scheme, and promotes confidence in the scheme and the collection agency.	We propose that regulations would require the collection agency to publish the non-financial information that it provides to the monitoring agency annually, with any personal or commercially sensitive information redacted.
Monitoring information provided by the collection agency should capture both complaints <i>and</i> disputes	Melissa Laing	Submitter noted that the disputes resolution process as proposed in the discussion document made a distinction between complaints and disputes, creating a potential monitoring threshold where only issues that proceed to formal disputes are reported. Submitter suggested that a level of complaints monitoring be included.	Proposals for the regulations now refer to “compliance with the scheme, including a record of <i>complaints</i> ” when outlining the monitoring and information requirements for the collection agency.
<i>Complaints process</i>			
Mediation may not be suitable for resolving disputes under the scheme	Melissa Laing, Copyright Agency Ltd	The proposals in the discussion document outline a three-part dispute resolution process, that included a formal complaints process, independent mediation, and arbitration or court. Submitters commented that mediation may not be effective at deterring non-compliance with the scheme, and noted that the cost of mediation could be prohibitive for some artists.	Amendments to the Bill through select committee mean that the collection agency will be subject to the Ombudsmen Act 1975 in respect of its functions and duties under the Act. Proposals for the regulations now just require the collection agency to have a formal complaints process. This, in

			combination with the ability to escalate these complaints to the Ombudsman (and then the courts if necessary), provides a sufficient process for resolving complaints and disputes that may arise under the scheme, and mean that an additional dispute resolution process is unnecessary.
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Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Final Policy Decisions for Resale Right for Visual Artists Supporting Regulations

Portfolio Arts, Culture and Heritage

On 16 August 2023, the Cabinet Social Wellbeing Committee (SWC):

Background

- 1 **noted** that in April 2023, SWC agreed to release a discussion document, *Resale Right for Visual Artists Regulations*, and noted that the Minister for Arts, Culture and Heritage (the Minister) intended to report back in July 2023 with final proposals [SWC-23-MIN-0026];
- 2 **noted** that public consultation has been completed and further analysis conducted to inform final proposals for regulations to support the Resale Right for Visual Artists Bill (the regulations);

Royalty payment threshold

- 3 **agreed** that the regulations will set the minimum threshold at which a royalty will be payable at \$1,000;

Administrative fee

- 4 **agreed** that the regulations will set the administrative fee at 20 percent of the resale royalty;

Appointment of the collection agency

- 5 **agreed** that the regulations will require the Minister to be satisfied that the prospective collection agency has the capability to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists, before making their decision on the appointment of the collection agency;
- 6 **agreed** that the regulations will require the Minister to be satisfied that the prospective collection agency has the capability to be inclusive of, and recognise the different needs of, all peoples in New Zealand before making a decision on the appointment of the agency;

Collection, holding and distribution of the resale royalty

- 7 **agreed** that the regulations include timeframes for when the art market professional must provide information on the sale and pay the royalty to the collection agency;
- 8 **agreed** that the regulations will require the collection agency to have a publicly available royalty distribution policy;

Cultural fund

- 9 **agreed** that the regulations will enable the collection agency to establish and operate a cultural fund that will be used to support the career sustainability of the wider artistic community;

Declined and unclaimed royalties

- 10 **agreed** that the regulations will set out a process and timeframes for dealing with declined and unclaimed royalties;
- 11 **agreed** that the regulations will enable the collection agency to transfer declined and unclaimed royalties into the cultural fund;
- 12 **agreed** that the regulations will require the collection agency to hold unclaimed royalties for six years;
- 13 **agreed** that the regulations will require that if there is no cultural fund, declined or unclaimed royalties will be returned to the liable parties who paid the royalties;
- 14 **agreed** that the regulations will require that if there is no cultural fund and the liable parties cannot be found, then the collection agency will retain the declined or unclaimed royalties to fund the costs of administering the scheme;

Engagement with scheme participants

- 15 **agreed** that the regulations will require the collection agency to ensure that participants in the scheme are informed of key decisions and to seek feedback on any significant changes to the scheme's operation;
- 16 **agreed** that the regulations will require the collection agency to determine, in consultation with right holders and the wider artistic community, the structure and purpose of the cultural fund, and review this periodically;
- 17 **agreed** that the regulations will require the collection agency to engage with Māori before making key decisions or significant changes to the operation of the scheme, including when determining the structure and purpose of the cultural fund;

Record-keeping and monitoring

- 18 **agreed** that the regulations will require the collection agency to keep financial records of resale royalty transactions and the financial position of the scheme, and that these records must be provided to the monitoring agency;
- 19 **agreed** that the regulations will require the collection agency to keep records of how the scheme is impacting artists, including the specific impacts on Māori artists and Pacific artists, and that these records must be provided to the monitoring agency;

- 20 **agreed** that the regulations will require the collection agency to keep records of how it is engaging with Māori before making key decisions or significant changes to the scheme, and that these records must be provided to the monitoring agency;

Complaints

- 21 **agreed** that the regulations will require the collection agency to have, if it does not already, a formal complaints process;

Next steps

- 22 **invited** the Minister for Arts, Culture and Heritage to issue drafting instructions to the Parliamentary Counsel Office to give effect in regulations to the above decisions;
- 23 **authorised** the Minister to take further decisions on minor and technical matters in line with the policy decisions above.

Rachel Clarke
Committee Secretary

Present:

Hon Carmel Sepuloni (Chair)
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Jo Luxton

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC



Cabinet

Minute of Decision


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Report of the Cabinet Social Wellbeing Committee: Period Ended 18 August 2023

On 21 August 2023, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 18 August 2023:

SWC-23-MIN-0108	Final Policy Decisions for Resale Right for Visual Artists Supporting Regulations Portfolio: Arts, Culture and Heritage	CONFIRMED
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Not relevant



Rachel Hayward
Secretary of the Cabinet