

Hon Carmel Sepuloni

Minister for Arts, Culture and Heritage

Resale Right for Visual Artists Bill  
LEG Committee Cabinet Material

17 April 2023

Date: 17 April 2023

Title: Resale Right for Visual Artists Bill LEG Committee Cabinet Material

Author: Ministry for Culture and Heritage

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:
1. Cabinet Legislation Committee Minute of Decision LEG-23-MIN-0010
  2. Cabinet Minute CAB-23-MIN-0072
  3. Resale Right for Visual Artists Bill Cabinet Legislation Committee Paper and associated appendices

The Resale Right for Visual Artists Bill itself will not be proactively released as this is already published on the NZ Legislation website:

[www.legislation.govt.nz/bill/government/2023/0236/latest/LMS742055.html](http://www.legislation.govt.nz/bill/government/2023/0236/latest/LMS742055.html)

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.

Section 9(2)(f)(iv) To maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

Section 9(2)(g)(i) To maintain the free and frank expression of opinions by officials in the course of their duty.



# Cabinet Legislation Committee

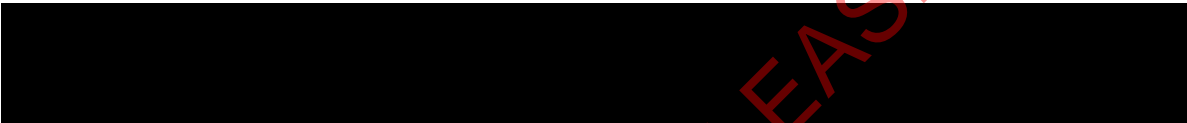
## Minute of Decision


*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.*

### Resale Right for Visual Artists Bill: Approval for Introduction

Portfolio                      Arts, Culture and Heritage

On 9 March 2023, the Cabinet Legislation Committee:

- 1 
- 2 **noted** that the purpose of the Bill is to meet a key international obligation under the New Zealand–United Kingdom and the New Zealand–European Union Free Trade Agreements to introduce an Artist Resale Royalty scheme which would enable eligible visual artists to receive a royalty payment when their work sells on the secondary art market;
- 3 **noted** that in August 2022, the Cabinet Social Wellbeing Committee agreed that the proposed legislation for the Artist Resale Royalty scheme (the Scheme) would provide a power to make regulations setting out the definition of visual art and art market professional for the purposes of the scheme [SWC-22-MIN-0144];
- 4 **noted** that the Parliamentary Counsel Office and the Legislation Design and Advisory Committee have advised that the terms visual artwork and art market professional are key to the scheme and should be defined in primary legislation;
- 5 **agreed** that the terms visual artwork and art market professional are primarily defined in the Bill rather than in supporting regulations;
- 6 **agreed** that, for the purposes of the scheme, visual artwork will not include:
  - 6.1 a building, as defined in section 2(1) of the Copyright Act 1994,
  - 6.2 a literary work, dramatic work, or musical work, as those terms are defined in section 2(1) of the Copyright Act 1994, or a performance of any of those works,
  - 6.3 any other class of artwork that is specified by the regulations.
- 7 **agreed** that the following examples of visual artwork be included in the Bill to guide understanding:
  - 7.1 visual works of cultural expression of Māori,
  - 7.2 visual works of cultural expression of Pacific peoples,

- 7.3 paintings, drawings, carvings, engravings, etchings, lithographs, woodcuts, and prints (including books of prints),
- 7.4 photographs, sculptures, collages, and models,
- 7.5 works of art in the form of crafts, ceramics, glassware, jewellery, textiles, weaving, metalware, and furniture,
- 7.6 visual works of art created by using computers, or other electronic devices,
- 7.7 visual works of art that are an ethnic or cultural variety of any of the works described above.
- 8 **agreed** that, for the purposes of the scheme, art market professional is defined as an individual or organisation acting in the business of dealing in artworks;
- 9 **agreed** that the following examples of art market professional be included in the Bill:
- 9.1 persons who carry on business as an auctioneer (within the meaning of section 5(3) of the Auctioneers Act 2003) and who specialise in visual artworks,
- 9.2 art dealers,
- 9.3 art consultants whose business includes dealing in visual artworks.
- 10 **approved** the Resale Right for Visual Artists Bill [PCO 23528/18.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 11 **agreed** that the Bill, once enacted, will bind the Crown;
- 12 **agreed** that the Bill be introduced by 16 March 2023;
- 13 **noted** that the Leader of the House has agreed that the select committee process for the Bill be shortened from six to four months;
- 14 **agreed** that the government propose that the Bill be:
- 14.1 referred to the Social Services and Community Committee for consideration;
- 14.2 

Rebecca Davies  
Committee Secretary

---

**Present:**

Hon Grant Robertson (Chair)  
Hon Andrew Little  
Hon David Parker  
Hon Kieran McAnulty  
Hon Dr Duncan Webb  
Hon Willow-Jean Prime  
Tangi Utikere, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG



# Cabinet

## 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*

### Report of the Cabinet Legislation Committee: Period Ended 10 March 2023

On 13 March 2023, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 10 March 2023:

LEG-23-MIN-0010    **Resale Right for Visual Artists Bill: Approval for Introduction**    CONFIRMED  
Portfolio: Arts, Culture and Heritage

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Rachel Hayward  
Secretary of the Cabinet

In Confidence

Office of the Minister for Arts, Culture and Heritage

Cabinet Legislation Committee

## ***Resale Right for Visual Artists Bill: Approval for Introduction***

### **Proposal**

- 1 This paper seeks Cabinet agreement to introduce the attached *Resale Right for Visual Artists Bill* (the Bill). The Bill will establish a resale right in New Zealand which will entitle eligible visual artists (or their successors) to receive a resale royalty payment when their qualifying artwork sells on the secondary art market.
- 2 Cabinet agreement is also sought to the definitions of the terms 'visual artwork' and 'art market professional', which have been included in the Bill rather than in supporting regulations as previously agreed.

### **Policy**

- 3 The New Zealand–United Kingdom Free Trade Agreement (NZ–UK FTA) commits New Zealand to introducing a reciprocal Artist Resale Royalty (ARR) scheme within two years of the FTA entering into force. The NZ–UK FTA is expected to enter into force in the first half of 2023 meaning an ARR scheme would need to be operational by mid-2025.
- 4 The FTA with the European Union (NZ–EU FTA), which is yet to be signed, contains a similar commitment to establish an ARR scheme within two years of entry into force. Signature of the NZ–EU FTA is expected in mid-2023 with possible entry into force in 2024.
- 5 In August 2022, Cabinet agreed to my proposal to introduce an ARR scheme in New Zealand through new standalone legislation. Cabinet also authorised me, as the Minister for Arts, Culture and Heritage, to approve technical elements of the framework within the policy parameters during the development of the Bill [CAB-22-MIN-0316 refers].
- 6 Cabinet agreed the scheme would have the following policy settings:
  - 6.1 The right will apply to resales of visual artwork that occur after the first transfer/sale of the artwork and which involve an art market professional or are to or from a public institution.<sup>1</sup> The right will apply regardless of whether the work was created before the legislation enters into force.
  - 6.2 The resale right will be available to New Zealand citizens (including New Zealand citizens that reside overseas) and individuals domiciled

---

<sup>1</sup> A public institution refers to a publicly funded museum or art gallery.



IN CONFIDENCE

or resident in New Zealand, as well as to citizens and residents of countries with which New Zealand has a reciprocal agreement in place.

- 6.3 The resale right will be inalienable and unable to be waived or transferred, except upon the right holder's death.
  - 6.4 The duration of the resale right will be the same as the duration of copyright (currently the life of the artist plus 50 years after death).<sup>2</sup>
  - 6.5 The resale royalty will be an additional five percent on the resale price (before any additional costs such as GST and buyer's premium).
  - 6.6 Private sales between two individuals will not attract a mandatory resale royalty; however, private sales will be able to opt into the scheme and voluntarily pay a royalty if desired.
  - 6.7 The seller and the art market professional will be jointly liable for payment of the resale royalty.
  - 6.8 A resale royalty will always be collected on an eligible resale, but artists may decline to receive a royalty payment and declined royalties could be paid into a cultural fund supporting artists' career sustainability.
  - 6.9 A non-government, not for profit collection agency will be authorised to manage the scheme and, in return, will be entitled to deduct an administrative fee from royalties collected.
  - 6.10 The collection agency will be monitored by Manatū Taonga Ministry for Culture and Heritage (Manatū Taonga).
- 7 The Bill [REDACTED] art market professionals (such as auction houses and dealer galleries) who will be jointly liable for payment of the royalty and have expressed concerns that the scheme will negatively impact the market. Art market professionals will likely also have some increased administrative and compliance costs associated with the scheme.
  - 8 Officials have consulted with art market professionals and have designed the legislation to minimise the impacts on this group as much as possible. International evidence suggests the impact on art market professionals will be low. Experience from overseas schemes also does not show a clear link to any negative impacts on the secondary market.
  - 9 Some policy issues relating to the operation of the scheme are outstanding and will be addressed in supporting regulations. This includes the dollar threshold at which a royalty will be payable, detail on the collection agency's operations, and how the administrative fee to be deducted by the agency will be set. Additional detail is provided below in the section on the associated regulations.

---

<sup>2</sup> Both the NZ-UK and the NZ-EU FTAs contain a commitment to extend the term of copyright to 70 years after death. In this event, the duration of the resale right would likewise extend to 70 years after death.

IN CONFIDENCE

*The definitions of visual artwork and art market professional have been included in the Bill rather than in supporting regulations*

- 10 Cabinet agreed, in August 2022, that the terms 'visual artwork'<sup>3</sup> and 'art market professional' would be defined through the supporting regulations rather than in the primary legislation [CAB-22-MIN-0316 refers]. The rationale for this was to help future-proof the scheme. As visual artworks and the art market are dynamic and frequently evolving, defining these terms through regulations would provide the flexibility to update them in the future and to accommodate and align with future reciprocal agreements.
- 11 Through the Bill's drafting process, the Parliamentary Counsel Office (PCO) and the Legislation Design and Advisory Committee (LDAC) have advised these terms are key to the scheme and so should be defined in primary legislation. They have also advised how best to define visual artwork to future-proof the scheme. This is primarily achieved through a broad definition which also provides the flexibility to exclude other forms of visual artwork through regulations if necessary.
- 12 In addition to engagement with PCO and LDAC, officials have worked closely with two sector advisory groups to define these terms so they can be included in primary legislation in a way that future-proofs the scheme while still ensuring it can operate effectively. The two groups (a General Advisory Group and a Māori Advisory Group) included the expertise and perspectives of artists (including Māori and Pacific artists), art market professionals, art law experts, the museums and galleries sector, and the royalty collection sector.
- 13 As defining these terms through legislation rather than supporting regulations does not change the policy intent of the Bill, I propose the definitions of visual artwork and art market professional be included in the draft Bill.
- 14 I propose defining visual artwork in the Bill by first clarifying what it is not, then giving examples of what it is. As such, for the purposes of the scheme, the definition of visual artwork does not include:
  - 14.1 a building, as defined in section 2(1) of the Copyright Act 1994
  - 14.2 a literary work, dramatic work, or musical work, as those terms are defined in section 2(1) of the Copyright Act 1994, or a performance of any of those works
  - 14.3 any other class of artwork that is specified by the regulations.
- 15 The following are examples of visual artworks (to the extent that they are not excluded by the definition above):
  - 15.1 visual works of cultural expression of Māori

---

<sup>3</sup> The exception to the definition of visual artwork was the definition of Toi Māori and Pacific art which Cabinet agreed would be defined in the legislation as "the cultural expression of Māori or Pacific peoples". This definition has not changed.



IN CONFIDENCE

- 15.2 visual works of cultural expression of Pacific peoples
  - 15.3 paintings, drawings, carvings, engravings, etchings, lithographs, woodcuts, and prints (including books of prints)
  - 15.4 photographs, sculptures, collages, and models
  - 15.5 works of art in the form of crafts, ceramics, glassware, jewellery, textiles, weaving, metalware, and furniture
  - 15.6 visual works of art created by using computers, or other electronic devices
  - 15.7 visual works of art that are an ethnic or cultural variety of any of the works described above.
- 16 This proposed definition of visual artwork reflects New Zealand's unique art market. It is sufficiently specific to enable the scheme to operate effectively but also broad enough to be future-proofed against the evolving nature of visual art.
- 17 For the purposes of the scheme, I propose that art market professional is defined as an individual or organisation acting in the business of dealing in artworks. The following are examples of art market professionals:
- 17.1 persons who carry on business as an auctioneer (within the meaning of section 5(3) of the Auctioneers Act 2003) and who specialise in visual artworks
  - 17.2 art dealers
  - 17.3 art consultants whose business includes dealing in visual artworks.
- 18 This definition is broadly aligned with definitions in ARR schemes in the UK, Australia and EU countries, and captures the mechanisms of resale in New Zealand's secondary art market.

**Impact analysis**

- 19 A Regulatory Impact Statement (RIS) was prepared in accordance with the necessary requirements and was submitted in August 2022 at the time Cabinet considered my policy proposals for an ARR scheme [CAB-22-MIN-0316 refers].
- 20 A cross-agency Quality Assurance Panel from Manatū Taonga and the Department of Internal Affairs reviewed the RIS and considered that it met the quality assurance criteria set out in the RIS framework.
- 21 The definitions of visual artwork and art market professional were not covered in the RIS as they were not intended to be included in the Bill at the time the RIS was drafted. The Treasury's Regulatory Impact Analysis team has since determined that the proposal to include these definitions in the Bill is exempt

IN CONFIDENCE



from the requirement to provide a RIS on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

## Compliance

- 22 The Bill complies with each of the following:
- 22.1 The principles of the Treaty of Waitangi. The Bill has been designed to ensure Māori artists have the opportunity to benefit equitably from the scheme, for example, the definition of visual artwork is broad and inclusive in relation to Toi Māori. The definition of art market professional is also broad enough to be inclusive of mechanisms for resale where Māori art is prominent. Further, the collection agency will be required 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. Supporting regulations will define more specifically how the collection agency will do this, but this will likely include providing for Māori to be involved in governance and decision-making and to be consulted on any changes to the operation of the scheme. There are also a wider range of Treaty issues around copyright, intellectual property, and the guardianship of taonga that relate to the creation and ownership of cultural expression. However, these issues are outside the scope of an ARR scheme and so are not addressed in this Bill.
  - 22.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 with no potential inconsistencies. A New Zealand Bill of Rights Assessment is currently being undertaken.
  - 22.3 The disclosure statement requirements. A disclosure statement has been prepared and is attached as Appendix 1.
  - 22.4 The principles and guidelines set out in the Privacy Act 2020.
  - 22.5 Relevant international standards and obligations, specifically Artist Resale Right obligations in the NZ–UK FTA (Article 17.46) and the NZ–EU FTA (Article 18.14).
  - 22.6 The Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

## Consultation

- 23 The following agencies have been consulted and their views reflected: the Ministries of Business, Innovation and Employment, Foreign Affairs and Trade, and Justice, the Ministries for Women, Pacific Peoples and Ethnic Communities, Inland Revenue Department, Te Puni Kōkiri, Te Arawhiti, the Treasury, the Department of the Prime Minister and Cabinet, the Legislation Design and Advisory Committee, and the Office of the Privacy Commissioner.

## IN CONFIDENCE

Officials also met with the Treaty Provisions Oversight Group and their advice has been reflected.<sup>4</sup>

- 24 Over the last three years, Manatū Taonga has conducted extensive engagement with key stakeholders from the arts and culture sector and the secondary art market which has informed the Bill. This included engagement with visual artists and their estates (including Māori and Pacific artists), art market professionals, advocacy groups, academics, art experts, art law experts, and organisations experienced in collecting royalties.
- 25 Manatū Taonga also undertook engagement with key Māori stakeholders including Māori artists, galleries, legal experts, and representative organisations such as Toi Māori Aotearoa and Toi Iho Charitable Trust.
- 26 Stakeholder engagement has shown strong support for an ARR scheme, although there are some who are opposed due to perceived administrative and compliance costs. Key themes from stakeholder engagement, including with Māori, have been reflected in the Bill and are summarised in Appendix 2.

### **Binding on the Crown**

- 27 I propose that the legislation will be binding on the Crown.

### **Creating new agencies or amending law relating to existing agencies.**

- 28 The legislation will not create a new agency or amend law relating to any existing agency.

### **Allocation of decision-making powers**

- 29 The Bill does not involve the allocation of any decision-making powers between the Executive, the Courts and Tribunals.

### **Associated regulations**

- 30 Regulations will be needed to bring the Bill into operation. The content of the regulations will:
  - 30.1 prescribe detail on the operation of the collection agency including the collection and distribution of the royalty and reporting and monitoring requirements
  - 30.2 prescribe how the administrative fee (to be deducted from each royalty by the collection agency to meet its operating costs) will be set
  - 30.3 set the dollar threshold at which a royalty will be payable on a resale

---

<sup>4</sup> The Treaty Provisions Oversight Group is a cross-agency group established by Cabinet agreement in March 2022. The group advises on providing for the Treaty in legislation and comprises officials from Te Arawhiti, Te Puni Kōkiri, PCO, the Ministry of Justice, the Department of the Prime Minister and Cabinet, and Crown Law Office.



- 30.4 provide detail on the cultural fund to support visual artists' career sustainability.
- 31 From October to December 2022, Manatū Taonga worked with the General Advisory Group and Māori Advisory Group on the policy proposals for regulations. These groups comprised a broad range of expertise and perspectives from the arts and culture sector and secondary art market, and their input has informed the development of draft proposals for regulations.
- 32 I am intending to seek Cabinet agreement in early April 2023 to release a Discussion Document, containing the policy proposals for the regulations, for public consultation. This will enable the public to consider the proposals for regulations while the Bill is before select committee, thereby enabling a more complete overview of the proposed legislation. Following public consultation, I will seek Cabinet agreement to the final policy proposals for regulations.
- 33 The proposed process and timing for the regulations is outlined below:

Milestone/Activity	Timeframe
Cabinet agreement to release regulations Discussion Document for public consultation	Early April 2023
Public consultation on Discussion Document containing policy proposals for regulations (concurrent with select committee consideration of the Bill)	April – May 2023

**Other instruments**

- 34 The Bill does not include provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

**Definition of Minister/department**

- 35 For the purposes of this Bill, 'Minister' and 'Ministry' are defined in section 13 of the Legislation Act 2019.

**Commencement of legislation**





- 37 The Act will come into force on the day after Royal Assent. It is intended that regulations will come into force 28 days later in line with the 28-day rule.<sup>5</sup>
- 38 The Bill does not set a specific commencement date for the Act. Instead, it proposes the commencement date is 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. [REDACTED]
- 39 A commencement date of no later than 1 December 2024 will ensure the scheme is operational within the timeframes required by the NZ–UK FTA.

### Parliamentary stages

- 40 The Bill should be introduced to the House by 16 March 2023 and referred to the Social Services and Community committee for consideration. This will enable the Bill to have its First Reading the following sitting week (on 28 March).
- 41 The Leader of the House has agreed that the select committee process for this Bill can be shortened from six months to four months. This is because most of the proposals within the current Bill reflect those within the discharged 2008 Bill, which underwent a full six month select committee process.<sup>6</sup> Based on the views heard through engagement in 2022, officials do not consider that submissions on this Bill will be substantially different from those in 2008. A four month select committee process will still provide sufficient time for key interested parties to make submissions and be heard by the committee.
- 42 I anticipate that the Bill will attract moderate interest from those within the visual arts sector including artists and their estates, artist advocacy groups, art market professionals, art collectors, and academics/experts.
- 43 Following the select committee, the Bill will progress through the remaining parliamentary stages. [REDACTED]

### Proactive Release

- 44 I intend to proactively release this paper within 30 working days as required by CO (18) 4, subject to any redactions as appropriate under the Official Information Act 1982.


---

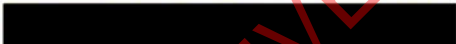
<sup>5</sup> It is a requirement of Cabinet that regulations must not come into force until at least 28 days after they have been notified in the New Zealand Gazette. The 28-day rule reflects the principle that the law should be publicly available and capable of being ascertained before it comes into force.

<sup>6</sup> In 2008, a select committee considered a Bill proposing to incorporate the artist resale right into the Copyright Act 1994. The Bill was discharged following the change of government after the 2008 general election.

## Recommendations

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

- 
- 2 **note** the Bill's purpose is to meet a key international obligation under the New Zealand–United Kingdom and the New Zealand–European Union Free Trade Agreements to introduce an Artist Resale Royalty scheme which would enable eligible visual artists to receive a royalty payment when their work sells on the secondary art market;
  - 3 **note** that, on the advice of the Parliamentary Counsel Office and the Legislation Design and Advisory Committee, I propose the definitions of visual artwork and art market professional be set in primary legislation rather than supporting regulations, which differs from what Cabinet agreed in August 2022 [CAB-22-MIN-0316 refers];
  - 4 **agree** that the terms visual artwork and art market professional are primarily defined in the Bill rather than in supporting regulations;
  - 5 **agree** that, for the purposes of the scheme, visual artwork will not include:
    - 5.1 a building, as defined in section 2(1) of the Copyright Act 1994,
    - 5.2 a literary work, dramatic work, or musical work, as those terms are defined in section 2(1) of the Copyright Act 1994, or a performance of any of those works,
    - 5.3 any other class of artwork that is specified by the regulations.
  - 6 **agree** that the following examples of visual artwork be included in the Bill to guide understanding:
    - 6.1 visual works of cultural expression of Māori,
    - 6.2 visual works of cultural expression of Pacific peoples,
    - 6.3 paintings, drawings, carvings, engravings, etchings, lithographs, woodcuts, and prints (including books of prints),
    - 6.4 photographs, sculptures, collages, and models,
    - 6.5 works of art in the form of crafts, ceramics, glassware, jewellery, textiles, weaving, metalware, and furniture,
    - 6.6 visual works of art created by using computers, or other electronic devices,
    - 6.7 visual works of art that are an ethnic or cultural variety of any of the works described above.

- 7 **agree** that, for the purposes of the scheme, art market professional is defined as an individual or organisation acting in the business of dealing in artworks;
- 8 **agree** that the following examples of art market professional be included in the Bill:
- 8.1 persons who carry on business as an auctioneer (within the meaning of section 5(3) of the Auctioneers Act 2003) and who specialise in visual artworks,
- 8.2 art dealers,
- 8.3 art consultants whose business includes dealing in visual artworks.
- 9 **approve** the *Resale Right for Visual Artists Bill* for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 10 **agree** the Bill, once enacted, will bind the Crown;
- 11 **agree** that the Bill be introduced by 16 March 2023;
- 12 **note** the Leader of the House has agreed that the select committee for the Bill be shortened from six to four months;
- 13 **agree** that the government propose that the Bill be:
- 13.1 referred to the Social Services and Community Committee for consideration;
- 13.2 

Authorised for lodgement

Hon Carmel Sepuloni  
Minister for Arts, Culture and Heritage

**Appendices:**

- Appendix 1: Departmental Disclosure Statement  
Appendix 2: Key themes from stakeholder engagement



## Appendix 1: Departmental Disclosure Statement

# Departmental Disclosure Statement

*Resale Right for Visual Artists Bill*

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Culture and Heritage.

The Ministry for Culture and Heritage certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 March 2023

PROACTIVELY RELEASED

**Contents**

Contents..... 2  
Part One: General Policy Statement..... 3  
Part Two: Background Material and Policy Information..... 7  
Part Three: Testing of Legislative Content..... 10  
Part Four: Significant Legislative Features ..... 12

PROACTIVELY RELEASED

## Part One: General Policy Statement

### *Introduction*

This Bill establishes an Artist Resale Royalty (**ARR**) scheme in New Zealand. The scheme provides a mandatory resale right to eligible visual artists that entitles them to receive a royalty payment when their qualifying artwork sells on the secondary art market.

The Free Trade Agreement between New Zealand and the United Kingdom (the **NZ–UK FTA**) requires New Zealand to introduce a reciprocal ARR scheme within 2 years of the NZ–UK FTA coming into force in 2023. The Free Trade Agreement between the European Union and New Zealand (the **NZ–EU FTA**) also commits New Zealand to introducing an ARR scheme within 2 years of entry into force.

To meet the terms of both free trade agreements, legislation is required because an ARR scheme cannot be implemented through private solutions or existing arrangements. New legislation is required because the alternative (amending the Copyright Act 1994) is not desirable because the Copyright Act is under review at this time with no expected time frame for completion.

### *Policy objectives*

The policy objectives of the ARR scheme are to—

- meet New Zealand's obligations under Article 17.46 of the NZ–UK FTA and Article 18.14 of the NZ–EU FTA to introduce an ARR scheme within 2 years of those free trade agreements coming into force;
- maximise the benefits of the scheme to visual artists and their estates;
- minimise the costs and impacts on art market professionals and the secondary art market;
- support a well-functioning New Zealand secondary art market;
- ensure that the scheme is as simple and cost effective as possible to administer with the long-term goal of it ultimately becoming self-sustaining.

Those objectives seek to create a scheme that provides benefits to visual artists and their estates without negatively impacting the secondary art market or placing an undue burden on art market professionals and buyers and sellers of art. A simple scheme will encourage compliance and reduce cost so that the scheme can ultimately be sustained without government funding.

### *Eligibility for resale right*

The resale right will enable the right holder (the artist or, if the artist is deceased, their estate) to receive a royalty payment each time their artwork is resold on the secondary art market. The resale right will apply only when ownership in a work is transferred by sale after the first transfer of ownership of that work by the artist (it will not apply to the first transfer or sale of an artwork).

The right will be available to New Zealand citizens (including those residing overseas) and individuals domiciled or resident in New Zealand, as well as to nationals and residents of countries with which New Zealand has a reciprocal arrangement in place. This aligns with the requirements of the NZ–UK FTA and will ensure that a wide range of artists benefit and that right holders are easy to identify.

In line with the requirements of the NZ–UK FTA and the NZ–EU FTA, the resale right will be inalienable and unable to be waived or assigned regardless of whether the artist who created the artwork owns the copyright for that work. The resale right will be able to be transmitted only upon the death of the holder of the right. On death, the resale right will pass to the person entitled to it under the artist's will. This will enable artists to determine who they want the right to transfer to on their death, which could include their iwi or hapū. If there is no will, the right passes by operation of succession law.

The duration of the resale right will be the same as the duration of copyright in a work, which is currently the life of the artist plus 50 years after their death. The resale right has linkages to copyright and having the same duration for both ensures that the 2 rights will be aligned. If the duration of copyright extends in the future to 70 years post-death (as has been committed to under both the NZ–UK FTA and the **NZ–EU FTA**), the duration of the resale right will also extend to 70 years post-death via a consequential amendment to the resale right for visual artists legislation.



***Resales covered by resale right***

A resale royalty will only be payable on sales that are equal to or above a specified minimum threshold in value, with this dollar threshold to be set through supporting regulations. The Bill specifies that this threshold must sit within the range of \$500 – \$5,000. Almost all international ARR schemes have a minimum threshold because having no threshold (and therefore covering all sales, even those of very low value) is not administratively feasible or cost-effective. The rationale for the proposed range is that a threshold lower than \$500 would make the scheme administratively unviable and a threshold above \$5,000 would only benefit a small number of wealthy and established artists and their estates, which is misaligned with the scheme's objectives.

Not every visual artwork will be covered by the scheme. The Bill defines visual artwork for the purposes of the scheme by first clarifying what art is excluded (a building, literary work, dramatic work, or musical work, as defined in the Copyright Act 1994) and then by clarifying what artworks are included. These examples have been chosen to be inclusive of the range of artworks sold in New Zealand and they include specific reference to the "cultural expression of Māori and Pacific peoples" as well as to "ethnic and cultural varieties of the listed artworks". The Bill provides the flexibility to exclude other forms of artwork further through regulations. This will enable the scheme to respond to any significant developments or changes in artistic practice.

The obligation to pay a resale royalty arises at the time when a visual artwork is sold on the secondary art market through a transaction involving an art market professional or a transaction to or from a public museum or public art gallery. For the purposes of the scheme, the Bill defines art market professional as "a person who is in the business of dealing in visual artworks". The Bill also provides examples of who is considered an art market professional, specifically, auctioneers, who specialise in visual artworks, art dealers, and art consultants.

While private resales between 2 or more individuals will not attract a mandatory resale royalty, the Bill provides for those involved in those sales to opt-in to the scheme and voluntarily choose to pay a resale royalty of an amount of their choosing. Stakeholder engagement found a strong interest in enabling parties of private resales to opt in to the scheme voluntarily as works by certain groups, such as Māori, Pacific, and female artists, are more likely to be resold privately. Enabling parties of private resales to opt in seeks to help address current inequities in secondary art market sales.

***Payment of resale royalty***

Resale royalties will be payable to living artists or to those entitled under a deceased artist's will (or their successors). The rate of the resale royalty will be an additional flat 5% of the resale price (excluding any fees such as buyer's premium, seller's commission, duty or tax charged under the Goods and Services Tax Act 1985). A 5% royalty rate seeks to strike a balance between ensuring that royalties go to artists and not placing too large a financial burden on buyers, sellers, and art market professionals. A flat percentage royalty was chosen, rather than a sliding scale with brackets for different rates as in the United Kingdom scheme, because a flat percentage is simpler to administer and is more future-proofed because the dollar brackets do not need to be adjusted for inflation.

In contrast to the United Kingdom and many European Union countries (but in line with the Australian scheme), there will be no cap on the maximum royalty payable. This acknowledges that artworks in New Zealand do not sell for the high prices seen in the United Kingdom and European Union markets. It will also be an essential factor in the scheme ultimately becoming self-sustaining as the collection agency will rely on the administrative fees taken from higher value sales to meet the costs of collecting and distributing royalty payments from lower value sales.

A resale royalty will always be collected on eligible resales and the right holder cannot opt out of the royalty being collected. However, the right holder can choose to decline to receive a resale royalty payment if they do not wish to interact with the scheme. Always collecting a royalty on eligible resales will prevent art market professionals from pressuring artists to opt out of the scheme as a condition of sale and also assist in protecting the long-term viability of the scheme because an administrative fee will always be collected. In the event that a royalty payment is declined, that royalty payment would go into a cultural fund for the purposes of supporting visual artists' career sustainability. In that way, the cultural fund seeks to provide a mechanism to ensure that declined royalty payments are still redistributed to benefit the artistic community. Further details of the fund will be set out in regulations.



## IN CONFIDENCE

The seller, together with the art market professional involved in the sale, will be jointly and severally liable for payment of a resale royalty (or, if there are no art market professionals, the seller and the buyer will be liable, for example, with a sale to or from a public museum or public art gallery). Liability to pay a resale royalty will arise on the completion of the resale. Joint liability aligns with the United Kingdom and Australian schemes and spreads the financial burden of the royalty payment. Joint liability also means that, in the event of non-compliance, there are multiple parties who are liable for enforcement action.

### *Management of resale royalty scheme*

A single, non-government collection agency will be authorised to manage the resale right, including the collection and distribution of resale royalties on behalf of artists. A non-government organisation (NGO) is common in many overseas schemes (including in Australia and the United Kingdom) as it enables the scheme to be administered independently of government. It also enables NGOs with existing systems, processes, and expertise in collecting royalties (which government does not have) to take on the role. Unlike the United Kingdom market, the New Zealand secondary art market is not large enough to sustain more than 1 agency so the Bill stipulates that there may be only 1 collection agency.

Only the collection agency will be entitled to receive information on any resale in order to secure payment of royalties, and it must treat this information as confidential in accordance with the Privacy Act 2020. Art market professionals will be required to provide relevant information on resales to the collection agency so that the agency can determine whether a royalty is payable and, if so, how much and to whom. If no art market professional is involved in the resale, then the public museum or art gallery must provide the relevant information. For private resales which choose to opt in to the scheme, the individuals involved in the private resale are responsible for providing relevant information to the collection agency.

The Bill devolves power to Ministers to determine the instrument of appointment of the collection agency and the terms and conditions of the appointment. Ministers will also be able to revoke the appointment of the collection agency if it is determined that the agency is not meeting its obligations or that the agency no longer wants to act as the collection agency. The collection agency will be monitored by Manatū Taonga Ministry for Culture and Heritage, which has the necessary sector expertise and monitoring experience.

As the collection agency is an NGO, the Bill does not prescribe how it must operate. However, the Bill sets out the following principles to guide the collection agency's operation, which stipulate that the agency must:

- operate in a way that is transparent, accountable, and respectful; and
- act in the best interests of the artists and their estates whose royalties it collects; and
- in carrying out its functions and duties:
  - acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists; and
  - be inclusive of, and recognise the different needs of, all peoples in New Zealand.

In return for managing the scheme, the collection agency is entitled to charge a fixed administrative fee or percentage of the royalty, with the process for setting this fee to be outlined in regulations. Regulations will also provide detail on the collection agency's operation including—

- the manner in which the agency must collect, hold, and distribute resale royalties; and
- the representation of rights holders in the management of the agency; and
- the disclosure of the financial affairs of the agency; and
- access to, and disclosure of, records held by the agency; and
- how the agency must gather, hold, and disclose that information; and
- any other matters relating to the conduct or operation of the agency.

IN CONFIDENCE

**IN CONFIDENCE**

***Enforcement***

Enforcement provisions will provide a mechanism in the event of non-compliance by parties who have obligations under the scheme. Non-payment of resale royalties and failure to provide information as required under the Act will be subject to civil proceedings. Civil proceedings under the Act can be pursued only by the collection agency, on behalf of the right holder. However, this would not prevent a right holder taking court action independently to enforce their right.

A court may make orders compelling the provision of necessary information to the collection agency or the payment of a resale royalty. Nothing in this Bill would affect any other power of a court.

***Commencement of legislation***

The Bill states the legislation will come into force on a date set through Order in Council with this date to be no later than 1 December 2024. The date is to be set through Order in Council because the legislation cannot commence until a collection agency has been appointed and relevant systems and processes are in place for the scheme to begin operating. A commencement date of no later than 1 December 2024 will ensure the legislation is in force within the timeframes required by the NZ–UK FTA.

PROACTIVELY RELEASED



## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<p><b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b></p>	<p>YES</p>
<p><i>Post-Implementation Review – Resale Royalty Right for Visual Artists Act 2009 and the Resale Royalty Scheme</i>, Office for the Arts, Australian Department of Infrastructure, Transport, Regional Development, Communications and the Arts, December 2019  <a href="https://www.arts.gov.au/documents/post-implementation-review-resale-royalty-right-visual-artists-act-2009-and-resale-royalty-scheme">https://www.arts.gov.au/documents/post-implementation-review-resale-royalty-right-visual-artists-act-2009-and-resale-royalty-scheme</a></p> <p><i>Artist's resale right – summary of IPO survey findings</i>, UK Government Intellectual Property Office, April 2014 <a href="https://www.gov.uk/government/consultations/artists-resale-right-evidence-gathering">https://www.gov.uk/government/consultations/artists-resale-right-evidence-gathering</a></p> <p><i>The Economic Implications of the Artist's Resale Right</i>, Joelle Farchy, Kathryn Grady, Fred and Rita Richman, World Intellectual Property Office, November 2017  <a href="https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389676">https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389676</a></p>	

### Relevant international treaties

<p><b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b></p>	<p>YES</p>
<p>This Bill seeks to give effect to New Zealand's obligations under:</p> <ul style="list-style-type: none"> <li>• Article 17.46 of the New Zealand–United Kingdom Free Trade Agreement</li> <li>• Article 18.14 of the New Zealand–European Union Free Trade Agreement</li> </ul> <p>These agreements both commit New Zealand to introducing an Artist Resale Royalty scheme within two years of the agreement entering into force.</p> <p><a href="https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-united-kingdom-free-trade-agreement/resources/signature">https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-united-kingdom-free-trade-agreement/resources/signature</a></p> <p><a href="https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-european-union-free-trade-agreement/nz-eu-fta-overview-3/">https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-european-union-free-trade-agreement/nz-eu-fta-overview-3/</a></p>	

<p><b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b></p>	<p>YES</p>
<p>A National Interest Analysis was prepared to inform an overall examination of New Zealand–United Kingdom Free Trade Agreement. A specific National Interest Analysis was not prepared in relation to New Zealand establishing an Artist Resale Royalty scheme.</p> <p><i>New Zealand – United Kingdom Free Trade Agreement: National Interest Analysis</i>, Ministry of Foreign Affairs and Trade, February 2022. <a href="https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-National-Interest-Analysis.pdf">https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-National-Interest-Analysis.pdf</a></p> <p>The National Interest Analysis for the New Zealand–European Union Free Trade Agreement has not yet been completed.</p>	

## Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Regulatory Impact Statement: Artist Resale Royalty Scheme</i>, Ministry for Culture and Heritage, August 2022, <a href="https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme">https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme</a></p> <p>Some information in the Regulatory Impact Statement is withheld consistent with section 9(2)(f)(iv) of the Official Information Act 1982. This is because some decisions are yet to be made by Ministers and Cabinet and so this information is withheld to protect the confidentiality of advice tendered by Ministers of the Crown and officials.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The Regulatory Impact Statement (RIS) identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA team based in the Treasury.</p> <p>A cross-agency Quality Assurance Panel from the Ministry for Culture and Heritage and the Department of Internal Affairs reviewed the RIS and considered it meets the quality assurance criteria set out in the RIS framework.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
<p>The definitions of 'visual artwork' and 'art market professional' for the purposes of the scheme were not addressed in the Regulatory Impact Statement. This is because these terms were originally to be defined in supporting regulations rather than the Bill. Following advice from the Parliamentary Counsel Office and the Legislation Design Advisory Committee, these terms are now defined in the Bill.</p>	

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
<p>The Ministry for Culture and Heritage has worked with two sector advisory groups to define 'visual art' and 'art market professional' so these terms can be included in the Bill in a way which future-proofs the scheme while still ensuring it can operate effectively. The work of these two groups has strongly informed the definitions included in the Bill.</p> <p>The two groups (a General Advisory Group and a Māori Advisory Group) included the expertise and perspectives of artists (including Māori and Pacific artists), art market professionals, art law experts, the museums and galleries sector, and the royalty collection sector.</p> <p>The Treasury's Regulatory Impact Analysis team has determined that the proposal to include the definitions of visual art and art market professional in the Bill is exempt from the requirement to provide a RIS on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.</p>	

IN CONFIDENCE

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The potential costs and benefits of this Bill are provided in the Regulatory Impact Statement which can be accessed at <a href="https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme">https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme</a>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
Information on the level of effective compliance and the nature and level of regulatory effort can be found in the Regulatory Impact Statement which can be accessed at <a href="https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme">https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme</a>	

PROACTIVELY RELEASED



## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

This Bill is consistent with New Zealand's international obligations under the Free Trade Agreements with the United Kingdom and the European Union which each require the introduction of an Artist Resale Royalty scheme.

Both Free Trade Agreements require that the resale right be inalienable, that it will apply to all acts of resale involving any sellers, buyers or intermediaries acting in the course of business of dealing artworks. The Free Trade Agreement with the UK also requires that the resale right be reciprocal. This Bill is consistent with those requirements.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Ministry considered the Treaty of Waitangi implications of an Artist Resale Royalty scheme in New Zealand including how policy proposals aligned with the Articles of the Treaty. Te Puni Kōkiri and Te Arawhiti were consulted on the policy proposals and their feedback incorporated.

The Ministry for Culture and Heritage conducted targeted engagement in 2022 with key Māori stakeholders including Māori artists, galleries, representative bodies such as Toi Māori Aotearoa and Toi Iho Charitable Trust, and Māori art and legal experts. Over 30 prominent Māori artists also approached the Ministry expressing their support for a New Zealand Artist Resale Royalty scheme.

The Regulatory Impact Statement provides further information on consideration of the Treaty of Waitangi implications of the Artist Resale Royalty scheme and can be accessed at <https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme>

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

NO

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

NO

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

NO



**Privacy issues**

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>

**External consultation**

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>External stakeholders have been consulted extensively on the policy proposals to be given effect by this Bill. This includes through the select committee consideration on the discharged 2008 Bill, extensive stakeholder engagement in 2019-20, and targeted engagement in 2022 on policy proposals.</p> <p>Appendix 2 of the Regulatory Impact Statement provides a summary of key stakeholder views and external consultation from 2007 to 2022 and can be accessed at <a href="https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme">https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-artist-resale-royalty-scheme</a></p> <p>Stakeholders will be further consulted on the policy proposals for the supporting regulations for the legislation including through a proposed public consultation process in April-May 2023.</p>	

**Other testing of proposals**

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>Most of the policy details of this Bill are based closely on policy settings within the UK and Australian Artist Resale Royalty schemes. The UK scheme has been operational since 2006 and the Australian scheme since 2010 and they have provided some indication of how the policy details of the New Zealand scheme may operate. However, it is acknowledged the UK and Australian secondary art markets are different and, therefore, the New Zealand scheme may have different impacts in the New Zealand context.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

**Powers to make delegated legislation**

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

**Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>

PROACTIVELY RELEASED



## Appendix 2: Key themes from stakeholder engagement

Key themes and actions from engagement with stakeholders (including with Māori) include:

- The definition of visual artwork needs to be carefully defined and the definition of Toi Māori and Pacific art should be broad and inclusive. This is reflected in the proposed definition of visual artwork included in the Bill and the way in which Toi Māori and Pacific art are defined as the “cultural expression” of Māori and Pacific peoples.
- There was strong support for investing unclaimed and declined royalties into a cultural fund to support artist career sustainability. The Bill provides for declined royalties to be paid into a cultural fund.
- Stakeholders were broadly supportive of the proposed royalty rate and the eligibility settings, although some art market professionals thought it could negatively impact their businesses and the broader art market. The royalty rate and eligibility settings in the Bill have been designed to be as simple as possible to reduce the compliance and administrative burden on art market professionals.
- Generally, stakeholders supported the resale right having the same duration as that of copyright, although some suggested the resale right should remain with the artist or their estate indefinitely. While an indefinite right was considered, this was not feasible and so the Bill proposes the duration be the same as the duration of copyright.
- Stakeholders expressed strong support for the collection agency to be independent of government, to work closely with artists and to operate in a culturally appropriate way. In line with this, the Bill proposes the collection agency will be a non-government, not-for-profit organisation. It also proposes that the agency is guided by legislative principles which require it to act in the best interest of rights holders and recognise the different needs of all peoples of New Zealand.
- A number of stakeholders emphasised that the scheme should align with the principles of the Treaty of Waitangi. The Bill includes a clause requiring that the collection agency must “acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists through its administration of resale royalties”.