

QUEENSLAND ARTIST FORM LETTER [LONG VERSION]

Mr Mark Taylor

General Manager, Arts and Regional
Department of Communications, Information Technology and the Arts
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Dear Sir,

RE: SUBMISSIONS RELATING TO A PROPOSAL FOR THE INTRODUCTION OF A RE SALE ROYALTY ARRANGEMENT IN AUSTRALIA

I am a professional Queensland artist, and welcome the Commonwealth Government's commitment to ensuring the sustainability and vitality of the Australian visual arts and craft sector, as evidenced in your Department's recent *Proposed Resale Royalty Arrangement Discussion Paper* (DCITA Discussion Paper).

I am writing in response to the call for submissions in that Discussion Paper regarding the proposed resale royalty arrangement, and make the following submissions for your consideration:

1. Whether Australia Should Introduce a Resale Royalty Arrangement

I advocate my strong support for the introduction of a nation-wide statutory resale royalties arrangement. My reasons for this position include:

- There has been significant research into this issue by industry groups and other professionals, and the consensus favours the introduction of a resale royalty scheme in Australia. These bodies and professionals include: the Queensland Artworkers Alliance, the Australian Copyright Council, the Arts Law Centre of Australia, the National Association for the Visual Arts Ltd. and Viscopy, and Rupert Myer in his recent comprehensive review of the industry in the *Report of the Contemporary Visual Arts and Crafts Inquiry* (2002).
- The introduction of a resale royalty arrangement in Australia would be consistent with international trends, where some thirty-three (33) countries have now introduced such a scheme. Recently, the European Union has directed its member states, including the United Kingdom, to similarly introduce a resale royalty scheme within the near future. It is important that Australia does not get left behind in relation to the continued growth in our industry, which is now becoming globalised, especially given technological changes.
- There is now ample evidence available in Australia, which shows that notwithstanding growth in the industry, Australian artists are still among Australia's lowest paid professionals, with "more than one in three artists earn[ing] less than the poverty line". (source: Bott J. *Commentary on Don't Give*

up Your Day Job: An Economic Study of Professional Artists in Australia, Sydney, Australian Council, 2003, p 2.)

- A resale royalty scheme would provide an important source of additional income for artists and would ensure that we are able to continue with our work.
- A resale royalty scheme would also provide an important psychological incentive for artists in terms of our belief, our focus, drive and continued commitment to our work.
- The scheme, coupled with an adequate education and communication campaign, would go a long way in improving the perceived value of our work and our community contributions.
- The scheme would address inequities in financial returns and security in the visual arts, when compared to other artists, such as writers, composers, musicians and filmmakers.
- Arguments against a resale royalty scheme often state that it unfairly benefits established artists over new or emerging artists. I do not accept this argument in the absence of comprehensive industry data collected over a long term, and would suggest that an appropriately structured model would address this concern in any event.

2. Principal Targets

I submit that the principal targets of a proposed resale royalty arrangement in Australia should artists at all levels of practice ranging from emerging artists to mid-career and established artists. The artists' immediate heirs should also benefit upon the death of an artist as these people are often family and friends who provide important support to artists during their lifetime.

3. Kind of Resale Royalty Arrangement to Best Deliver Benefits

I submit that the scheme ought to be legislative in nature, rather than be provided through private contract, as artists often do not have the same bargaining power as other members of the industry and would potentially be disadvantaged by a contractual arrangement.

4. Any Unique Features of the Australian Art Market

Most of the unique features of the Australian art market have already been identified in the literature, particularly the Myer's Report (2002), but features more unique to the Queensland scene include:

- Our industry has strong representation in the regions, and is not centralised to Brisbane. There are also a significant number of professional Indigenous artists in Queensland working in both urban and remote areas.
- In terms of the type of art works that should be covered by the scheme, it is essential that artistic works affixed to or forming part of a building are included.

Commissions of this kind currently represent a significant portion of many Queensland artists' practice.

The Queensland experience in this regard may be different to all other Australian states as a result of the State Government's Art Built-in policy which sees an allocation of 2% of the capital works budget of building projects dedicated to commissioning art for incorporation into the building.

5. Important Principles Underpinning Choice of Model

It is submitted that a resale royalty scheme in Australia ought to be underpinned with the following principles:

- (a) It provide fair and equitable income return to all artists for their work.
- (b) It be give important attention to the needs of sensitive groups, such as Indigenous Australian artists, young, new and emerging artists,
- (c) It be cost effective and operate efficiently in terms of royalty collection and distribution.
- (d) It provides incentives for artists to continue with their work, and to be able to support themselves and their families from their arts practice.
- (e) In general terms and overall, that the scheme meet the primary objectives as set out above.

6. Kind of Works to be Covered

I submit that the works that should be covered by the proposed resale royalty arrangement should accord with the definition of artistic works as defined in SS 10 (1) (a) and (c) of the *Copyright Act Cth 1968* and by relevant case law. This would provide consistency, flexibility¹ and greater certainty in the workings of the enabling legislation.

Buildings as defined in S10 (1) (b) should be excluded, however, as stated above, it is essential that artistic works affixed to or forming part of a building be included in the definition of artistic work, as commissions of this kind currently represent a significant portion of many Queensland artists' practice.

7. Duration

The royalty should apply for a term that is consistent with the work's copyright term in accordance with the *Copyright Act 1968*.

8. Ability of Artists to Assign, Waive or Sell

¹ For instance, in relation to new emerging hybrid or digital art forms.

Artists should have the right to assign, waive or sell their resale royalty rights under any arrangement implemented. Artists should have the same opportunities to structure the affairs of their business that is afforded to other businesses. A distinction can be made between a resale royalty right, which is a property right and other intellectual property rights such as an artist's moral rights which are inalienable because they exist to maintain the integrity of the work and the artist's intentions.

9. A Threshold Level

The scheme should have a low minimum threshold of approximately \$1000. The statistics detailed in Schedule B of the Discussion Paper show that a low threshold level is required to ensure that a maximum number of artists at all stages of their career can benefit from the scheme. A low threshold is also necessary in the Australian context as the Australian art market is less developed and artists simply cannot achieve the same high sale prices that they may receive if selling the same work in markets such as Europe and the USA.

10. Rate

I would suggest a rate of 5% which accords with many overseas countries, such as France, Hungary, Norway, Greece, Spain and the State of California. A flat rate provides artists with higher levels of income than a sliding scale, would provide broad coverage for artists and balance administrative costs of the scheme.

11. Organisation to Administer

The scheme should be administered in an efficient, cost effective way by a Commonwealth government agency or not-for-profit copyright collection agency with experience and established administrative systems in this field.

12. Alternatives

Schedule B of the Discussion Paper highlights important issues of equity where for instance large payments are made to a small group of well established artists and small payments are made to a greater majority of less established artists.

This issue may be addressed by placing a ceiling on payments to artists or their estates and diverting some of the funds collected from the sale of these artworks to a fund to be distributed to other artists.

13. Impact on Groups and Australian Art Market

The implementation of a resale royalty scheme with the above features, would have positive impacts on the Australian art market. These may include:

- Sensitive groups such as new, emerging or young artists and Indigenous artists would be provided with financial incentives to work towards consistent

production of artwork throughout their career, in the knowledge that there exists the potential of a more secure future for themselves and their families.

- So long as the introduction and running of the scheme is coupled with an adequate education and communication programme, a new sense of value, focus and direction would grow in Australian artists.
- Australian identity, Australia's cultural and artistic interests, and industry dialogue would all be well served through a resale royalty scheme that encouraged the continued production of high quality Australian art and cultural product.

Thank you for receiving my submissions.

Yours faithfully,

Louise Richards-Green

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Queensland Artist