

## **ARTS SA'S RESPONSE TO THE DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS' PROPOSED RESALE ROYALTY ARRANGEMENT DISCUSSION PAPER**

### **Summary**

- Arts SA supports the introduction of a resale royalty scheme.
- While a resale royalty scheme would not constitute a financial panacea for the contemporary visual arts and craft sector, it would inject some additional funds into the sector and complement the Visual Arts and Craft Strategy's funding initiatives for individual artists. It would also be an important symbolic gesture, recognising a perceived right of contemporary artists and their significant contribution to the nation's cultural and economic life.
- The scheme should have a sliding scale for calculating royalty rates. The sliding scale should be designed to give priority to living artists, especially those on a low income and Indigenous artists.
- Administrative overheads for the resale royalty scheme should be kept to a minimum.
- We favour the introduction of a legislated scheme because this would impose a legal requirement to pay a percentage of the resale price of a work of art to the artist or his/her estate.
- We also propose that a working group (comprised of government and industry representatives) should be established to make recommendations to the Australian Government regarding the fine detail of the scheme, when/if it is decided to introduce a resale royalty scheme.
- In the meantime, Arts SA's views on the broad issues raised in the Discussion Paper are set out below.

### **Impact on the market**

- As noted in the Discussion Paper, it is difficult to assess the impact of a resale royalty scheme on the Australian contemporary art market, and it would be counterproductive for all concerned – artists, auction houses and collectors – if a scheme was introduced and found to diminish the market for Australian contemporary art.
- However, Arts SA is encouraged to support a resale royalty scheme by the Discussion Paper's positive finding that the Australian art market has strengthened significantly over the past ten years - despite the introduction of increased auction house fees and commissions, capital gains and goods and services taxes.

### **Policy environment**

- Introduction of a resale royalty would complement the SA Government's recent Strategic Directions paper *Arts: The Heart of South Australia*, which recognises the importance of valuing and maximising income-earning opportunities for living artists and highlights the unique contribution of Indigenous artists.
- On a broader front, a resale royalty would also complement the SA Government's new Strategic Plan *Creating Opportunity*, which recognises the value of creative artists under

its *Fostering Creativity* objective and identifies the importance of improving the social, cultural and financial wellbeing of Aboriginal communities under its *Expanding Opportunity* objective.

## **Objectives**

- There are strong non-financial reasons, including recognition a perceived right of visual artists and their contribution to the nation's cultural and economic life, as well as modest financial motivations, for introducing a resale royalty scheme.
- The six possible objectives for a resale royalty scheme outlined in pages 16–21 of the Discussion Paper all include some positive motivations for establishing a resale royalty scheme.
- Arts SA recognises that a resale royalty scheme will bring greater financial benefits to established artists than to emerging artists (whose works are resold at a lower price), and that a scheme, which includes deceased artists, will bring greater benefits to deceased artists' estates than to living artists.
- However, within this context, we believe the royalty scheme should be designed to deliver as great a benefit as possible to:
  1. living artists
  2. emerging artists whose works realise lower prices than established artists
  3. Indigenous artists.

## **Calculating royalty rates**

- In line with these objectives, Arts SA believes there should be a sliding scale for calculating the scheme's royalties. It should deliver the maximum royalty rate for works at the lower end of the price spectrum, with the royalty rate declining as the sale price of works increases.
- We propose:
  1. There should be a low/no minimum threshold.
  2. There should be a cap which would set an upper limit that the royalty payment could not exceed.
  3. There should be a sliding scale for calculating royalty payments in between.
- However, we are not making recommendations regarding specific rates or thresholds at which the rate should change at this stage. This issue could be addressed at a later stage by a working group, when/if it is decided to establish a resale royalty scheme.
- The sale price thresholds, at which the sliding scale changes, would also need to be reviewed periodically to take account of inflation. Alternatively, the thresholds could be linked to increases in the CPI.
- Ideally, the scheme should have a "portion-based" sliding scale, with the royalty rate being calculated for each portion of the sale price between the various thresholds. This would guard against the potential situation, where an artist whose work sells for a lesser price could receive a higher royalty payment than an artist who sells a work at a higher price because the former artist's work sells just below the threshold for the next (lower) percentage rate.

- However, Arts SA's accepts that a "portion-based" sliding scale could be so administratively complex and expensive that it would not be a viable option. This is another issue that could be addressed by the proposed working group, when/if it is decided to establish a resale royalty scheme.

### **Works covered by the royalty scheme**

- The resale royalty scheme should cover all original and tradeable works of contemporary visual art. It should also cover appropriate works in the contemporary craft and design categories.
- Definitions for inclusions and exclusions should be refined by the proposed working group.

### **Transactions included in the royalty scheme**

- The resale royalties should apply to all public sales involving art professionals through auction houses, public galleries and professional dealers.
- They should apply to the resale of works both owned and taken on consignment by these parties. The resale of works owned by any of these parties should not be excluded based on an argument that they constitute private sales.

### **Inalienability of resale royalty**

- The right to royalties should be inalienable – it should not be able to be waived or assigned. This would preclude art vendors (e.g. galleries, dealers) from buying the resale royalty from artists, who are arguably in a weaker bargaining position than vendors.
- In line with our view that the right to royalties should be inalienable, Arts SA believes the resale royalty should be paid directly to the artist, and after the artist's death to his/her heirs, rather than to a communal fund for needy artists.

### **Duration of a resale royalty**

- Duration of a resale royalty in Australia should coincide with the duration of copyright provisions – currently the life of the artist plus 50 years.
- If Australia extends the term of copyright to life plus 70 years as an outcome of a Free Trade Agreement with the United States, then the duration of the resale royalty should mirror this change.

### **A legislated scheme**

- Arts SA favours the introduction of a fully legislated resale royalty scheme because this would impose a legal requirement to pay a percentage of the resale price of a work of art to the artist or his/her estate.
- We agree with the Discussion Paper that the Australian Government would need to consider a number of issues (including the desirability of stand-alone legislation versus amendments to the Copyright Act 1968, constitutional matters and tax issues) before introducing a legislated scheme.

- These issues could be addressed by **the proposed working group**, when/if it is decided to establish a resale royalty scheme.

### **Collecting and distributing the royalty**

- The resale royalty should be collected and distributed nationally by a single agency.
- The collecting and distributing agency must have the capacity to observe confidentiality with respect to individual transactions and provide informative, aggregated annual statistical data to the Australian Government. This will enable governments and the sector to track the scheme's overall returns to artists and its specific outcomes for living artists, deceased artists, Indigenous artists, women artists, emerging artists (whose works fetch low resale prices) and established artists (whose works fetch higher resale prices).
- The resale royalty scheme's administrative overheads should be kept to a minimum in order to maximise returns to artists. This suggests the scheme should probably sit within an existing agency rather than creating a new organisation.
- Since the Visual Arts Copyright Collecting Agency (Viscopy) has expressed an interest in administering the scheme for an estimated 20% or less, the feasibility and desirability of this option should be explored.
- The possibility of the Department of Communications, Information Technology and the Arts (DCITA) administering the scheme should also be investigated, given DCITA's success in administering the Public Lending Right (PLR) and the Education Lending Right (ELR) schemes. In 1999, the cost of administering the PLR Scheme was estimated at 8.7%, and a 2003 review of the ELR estimated administrative costs to be 6% of the total amount distributed. While overseas experience suggests that the costs for administering resale royalty schemes are considerably higher, DCITA appears to be a highly credible contender for managing an Australian resale royalty scheme.

**ARTS SA**

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