

**PROPOSED RESALE ROYALTY ARRANGEMENT**  
**RESPONSE BY ARTS VICTORIA TO DISCUSSION PAPER**  
August 2004

**Support for Resale Royalty Rights**

Arts Victoria welcomes the positive response to the Myer Report's recommendation that the Commonwealth Government introduce a resale royalty arrangement for the visual arts. The Department of Communications, Information Technology and the Arts is to be congratulated on its work in investigating the various schemes and proposals, drawing together previous research and discussion, and examining the impact of possible future arrangements.

Arts Victoria supports the introduction of a resale royalty scheme in the context of the Victorian Government's arts policy, *Creative Capacity +*, with a major goal being to build a dynamic arts sector and promote the creation of new works. More particularly, priority actions identified in the policy include investment in VFLAA (Victorian Foundation for Living Australian Artists) to provide income opportunities for living Australian artists while building the State's art collections, and support for the Victorian Indigenous arts sector.

Arts Victoria is currently working with the Koori Business Network and has produced a draft report, *The Indigenous Arts Sector in Victoria: on the threshold of success*. The report provides recommendations on supporting an economically viable, culturally appropriate and sustainable Victorian Indigenous visual arts sector. This report recommends that a resale royalty be introduced to provide a direct financial benefit to visual artists, particularly Indigenous artists, following the on sale of their original work in line with the recommendations of the Myer Report.

**Principles and Objectives of a Resale Royalty Scheme**

A resale royalty scheme should be based on the recognition that the creator of a work stands in a different relationship to the work than the relationship that a subsequent buyer of seller has to that work. In the interests of justice and equity, it is appropriate that the creator's interest in the work should be preserved.

The chief aims of a resale royalty scheme include :

- The provision of income support for artists and their dependents is important given the low income of artists – particularly in the visual arts – as noted in various studies up to the most recent Throsby report, *Don't Give Up Your Day Job*;
- Ensuring that artists derive the maximum benefit from the works that they create; and
- The extension of copyright and royalty rights available in other areas of artistic/creative production to visual artists.

Resale royalty should be an inalienable individual right:

- The payment should be made to the individual artist/creator of work, and after death to her/his heirs which may include community rather than being directed into a more general fund for artists;
- The resale royalty right should be unassignable. While it is recognised in some cases artists may receive financial benefit by assigning rights to a dealer or gallery, in general, having less bargaining power, the artist is in a vulnerable position and open to exploitation.

## **Operations of a Resale Royalty Scheme**

### *Calculating Resale Royalties*

The Resale Royalties Discussion Paper provides extensive and useful analysis of the impact of various models for calculating payments under a resale royalty scheme. It is recognised that any scheme will disproportionately benefit dead artists over living artists, and recognised artists over less well known artists. At this stage, Arts Victoria will not be making recommendations on specific rates of payments, but it is proposed that the scheme should be structured to provide as much benefit as possible to:

- living rather than dead artists;
- emerging artists whose works sell for lesser sums; and
- Indigenous artists.

These priorities suggest that the scheme should incorporate:

- a low minimum threshold;
- a sliding scale for calculating royalties; and
- consideration of capping payments.

It is noted that the operation of a sliding scale of royalties creates anomalies whereby around the point of the change in payment rates, the return on a higher priced art work at a lesser rate of royalties may be less than the payment for a lower priced sale. For example, the sale of an art work for \$20,000 at a resale royalty rate of 5% generates a return to the artist of \$1,000; while the sale of a work for \$21,000 at 4.5% results in a payment of \$945. To deal with these anomalies, the scheme should include a proviso that the maximum payment available under higher royalty rate should be the minimum payment made under the lower royalty rate.

### *Duration of Resale Royalties*

As noted above it is recognised that payments to dead artists' estates would make up the largest proportion of payments under any model - according to the calculations in the Discussion Paper around 60% of all payments. While increasing the income for living artists has been identified as a priority for the scheme, restricting the scheme to living artists would simply mean reducing the total amount of payments made, and indeed could work against the objective by making works of dead artists more attractive to buyers.

In the interests of equity, simplicity and efficiency, the duration of resale royalty rights should be consistent with existing and future copyright laws – currently for the life of artist plus 50 years, but likely to be extended to 70 years after death of artist.

### *Scope and Applicability of Resale Royalty Rights*

Arts Victoria believes that resale royalty provisions should be applicable to all sales through auction houses, commercial galleries and professional art dealers, and applicable to all art works where the creator is identifiable, and traded through these sales.

Definitions of art work may be problematic, but a broader, rather than a narrower, view should prevail. As well as paintings, drawings and sculptures, the scheme should include prints, limited editions of photographs and other visual images, textiles, ceramics, metalwork, and glass. The defining feature should be its status as an artistic/creative product rather than the medium in which it is created.

As noted in the Discussion Paper, a distinction between private and public sales is becoming less relevant to the operations of a resale royalty scheme. Rather the key characteristic for identifying applicability should be the professional and/or commercial status of the selling agent.

An issue not specifically addressed in the Discussion Paper is the definition of secondary sales. While the most common selling arrangement between visual artists and commercial galleries is that of consignment, where the gallery sells the work as the agent of its creator, there are instances when galleries and/or dealers may commission or purchase works direct from the artist. The issue of defining secondary sales may be of particular concern in parts of the Indigenous art market, where there are noteworthy examples of works being purchased at low prices and on-sold at significant profits for the buyer-seller without benefit to the creator. While a resale royalty arrangement cannot necessarily police the activities of unscrupulous dealers, it is fair and reasonable that the resale royalty arrangements should apply to all on-selling transactions by professional dealers and galleries.

#### *Managing a Resale Royalty Scheme*

Arts Victoria is not committed to a specific structure for the management of a resale royalty scheme. The arrangements for collecting and distributing royalties should be uniform across Australia and cost-efficient, undertaken by a single central agency. The body should be independent of the visual arts market, able to maintain confidentiality of transactions, while having the mandate and the capacity to provide a range of aggregated data and analysis to allow for monitoring of trends and outcomes in the visual arts market.