

## **QUESTIONS (Appendix C)**

1. Should Australia introduce a resale royalty arrangement? What are your primary reasons for your support or lack of support for such an arrangement?

**I do not support the present scheme for the reasons:**

**(a) That it does not in any sense match its stated objectives, to serve artists and not merely the better off artists who come up regularly on the secondary market. Statistics of the miniscule proportion of practicing artists who actually receive any benefit through this scheme in Europe totally disprove both the viability of its expressed motive as well as its efficacy.**

**It has failed in Europe and been publicly rejected by artists, because of its fundamental inequity, including by those well-off artists who do benefit financially from its provision. Who are embarrassed by the lack of income going to those less prominent artists who actually need it (those for whom it is hypothetically intended to include but fails in practice to assist).**

**(b) That it is overwhelmingly promoted in both Europe and Australia by administrators and not by artists. The administrators being the true beneficiaries of the scheme, which provides them with greater economies of organisational scale, position and, especially, funding: to be extracted from the monies intended for artists.**

**(c) That its introduction, following on the heels of GST, will result in a further epidemic of discounting in the primary market (all professional artist's primary to sole means of support) a further diminution in artist's real income.**

**(d) That the flow-on effect on the primary market of this charge on top of GST, buyer premiums, seller premiums and capital gains tax, will add further disincentive to the art market as a whole in respect of the trading viability of the commodity 'art'. That which provides the bulk of most artist's income.**

A large and growing proportion of primary market sales are now for the purpose of investment, including the burgeoning sphere of superannuation investment. I daresay it would not take a commercial genius to ascertain, given the competitive nature of investment, that this will further erode the viability of art in the larger, competitively multi-faceted investment market, thus further adding to the disincentive to acquire art.

At meetings I have attended at the Australia Council for the purpose of discussing this scheme it has been repeatedly asserted by administrators present (without a shred of market knowledge or substantiation) that the royalty will bring increased income into the art market: when it is apodictically clear to all who are actually part of the merchandising and marketing areas of the visual arts industry that it can only have the opposite effect.

Similarly it is asserted by the same people that the market has actually grown following and *despite* the previous introduction of GST. Whereas the palpable truth is that there is no way of knowing what the current level of the market would now be without GST - as follows, without yet further imposts as now proposed - other than as observed that it results in insistent discounting hence high-proportional income loss as well as increasing investment disincentive.

(e) An administrator's familiar fall-back claim – an understandably emotive one - is that the resale royalty will be of particular benefit to rurally based indigenous artists, their families, estates and communities: that this royalty of between 3% to 5% will redress the inequity aboriginal artists suffer because of the widespread practice of 'carpetbagging', where their work is bought directly from them for miniscule amounts and sold nationally and internationally for exponentially greater sums.

The dubious logic in this instance is that artists whose works are acquired from them for, say, between \$1,000 and \$5,000 (or less) and sold on (secondary market) at much higher prices of, again 'say', \$10,000 to \$30,000 will, by the imposition of a low percentage royalty (3% to 5%), be adequately compensated for this exploitation.

But clearly *someone* has not done their *sums*: by the application of the maximum 5%, of the \$10,000, the artist will thereby only receive \$500; of the \$30,00 only \$1,500. Whereas the real issue for these artists is to be made independent of such exploitative practices altogether and thereby provided with the same professional standards as apply to all other Australian artists: where each in the cited instances would be entitled to the standard 60% rather than the mere 3% to 5% proposed: that is, between \$6,000 and \$12,000 on the basis of the cited transaction as opposed to \$500 and \$1,500: a substantial disparity.

But, one must ask, who is focusing on it? – other than a handful of entirely honourable individuals like Tony Oliver at Jirrawun and art dealers like Bill Gregory, William Mora and others.

Certainly not the administrators, who have much to gain from the proposed royalty scheme and have noticeably failed to concertedly address the real dimension of this national problem that plagues Australia's outback artist communities.

2. What should be the primary objectives of a resale royalty arrangement in the Australian environment?

Firstly to ensure that its provision is directed to the widest artist community but especially those in greatest need. Not as a medieval 'grace and favour' benefaction but even-handedly, so that there is a generally felt real benefit, and not merely one, as is entrenched in the proposal under discussion, for the inevitable benefit of well-off artists, rich estates and provision of administrative operational costs.

3. Who do you consider should be the principal targets of a resale royalty arrangement and why?

Rather, *what and who* should be. If the scheme's imposition is, as widely perceived, a foregone conclusion, I would propose a pooling of all income – as a national, government organised and administered fund – to be set aside for elder artists pensions. Artists, by nature of their mode of earning, are rarely superannuated and this could be a very worthwhile application. Another area, of developmental support, could be for much needed exhibitions infrastructure, opportunities for residencies, community facilities and so on.

4. What kind of resale royalty arrangement would best deliver benefits to the intended beneficiaries and why?

**Given inexplicably that the scheme as it stands explicitly favours the better-off members of the artistic community, their heirs and estates I, like most who are professionally engaged in the visual arts and actually care, would obviously prefer that the proposed royalty - alongside a range of better focused alternatives - be subjected to a far more effectively informed and wide-ranging field analysis prior to even attempting to foist it upon the nation's already overburdened artistic weal.**

- A fully legislated scheme;
- industry self-regulation; or
- contract-based resale royalty.

**These three seemingly *fait-accomplis* alternatives should be subjected to the same above referred-to process of examination, in concert.**

5. Are there any unique features of the Australian art market which need to be considered in designing a workable resale royalty scheme?

**Refer to my response to your first question (a), (b), (c), (d) and (e). The Australian art market is smaller but similar in most respects to the European one where the scheme has failed.**

**It differs in the conditions as referred to in I (e) which – as I point out - are not adequately addressed in the wider terms of the proposed Resale Royalty scheme.**

6. What are the most important principles underpinning the choice of model or the form of resale royalty arrangement? (eg. a scheme that provides royalty payments to the greatest number of living artists, or limits the impost on small business, or excludes works that decrease in value, etc)

**Obviously the first, '...the greatest number...' , as well as the most needy, but how could this possibly be accomplished under this scheme when the model proposed is merely a copy of the failed European one that has demonstrably favoured high-profile artists and estates to the exclusion of '...the greatest number...'. But obviously also the second and third: they all impact.**

**The concept as expressed (6) as 'decrease in value' is rather simplistic. One needs to consider the whole sliding scale of price, costs, imposts and fees and taxes incurred in process in order to avoid fostering disincentive.**

7. What works should be covered by the arrangement and why?

**The curly question of definitions: The Government's representative arts body, the Australia Council has grouped arts and craft 'VACB' as one interlocked 'Cultural' disciplinary category. Much art has at least its origins in other disciplines and is hybrid. Some 'craft' objects are things of far superior spiritual or aesthetic resonance than many so reified works in the metier of 'painting' or 'sculpture'. It will have to include Conceptualism, Process art, Installation, Performance art and so on. It would follow that the definition should be inclusive?**

**The days when anyone could assert that there is a viable hierarchy of modalities is long-gone. Curatorship has taken account and Art Museums are sensibly considered best practice final arbiters. All cultural constructs of a visual or visually associative nature will have to be considered.**

**The question presents itself, who is going to decide who decides which objects of delectative or dialectic consummacy are to be approved for inclusion in the scheme? After all the visual arts is an arena where it is well known that subjectivity reigns and values change often and dramatically and the process will need to be conducted expertly at arms-length. If it is to serve artists and not just better off artists it cannot be based solely on financial data.**

8. What duration should apply and why?

**Having no intellectual property implications (unlike copyright) in a robust capital economy? Hopefully not too long after the artist's demise perhaps a decade. I should indicate that I do not favour the notion of long-term hereditary ownership of the fruits of any individual's innovation. Copyright is a different matter, a protection against misuse and exploitation.**

9. Should artists be able to assign, waive or sell the resale royalty in their works, and why?

**If it is intended as stated to benefit heirs then clearly this depends on the matter in the previous item: duration. It also depends on whether you confuse resale royalties with issues of copyright.**

**At its initiation one *interested* administrative group attempted to justify the idea of imposing Resale Royalties by confusing it with copyright, stating that visual artists did not receive copyright for the**

reproduction of their works whereas musicians, composers, writers did. Given that this is not true and artists actually do share the same right, for all reproductions of their work, this was soon understood by many to be a false basis of comparison

(The matter of royalties relative to copyright seems to be somewhat confused – practically and legalistically – in Senator Lundy's Private member's Bill).

**It is a professional imperative that artists be able to selectively assign, sell or waive copyright. Resale Royalties are of a different order.**

10. Should there be a threshold level for the resale of works, and if so at what level should that be set and why?

**By this I take it that you mean a financial threshold, and of course there would have to be, given the purchase to sale price relativities and disincentive factors. It needs to be comprehensively examined. It should, if applied, be so determined as to have the least negative impact on the viability of the overall art market ; confidence in the commodity's future investment viability. I believe it would be arbitrary at best in the present climate of sectional misinformation to prescribe this.**

11. What rate of royalty should apply and why? Also, should the royalty be set as a flat rate or on a sliding scale and why?

**Ditto (10).**

12. What type of organisation should administer any arrangement and what factors should be used to assess and ensure the performance of such a body? (eg. highest rate of return to artists, transparency of process, administrative efficiency, low costs etc.)

**Not a kind of organisation that will need to draw on the royalty proceeds for its operational costs. This would help dispel the belief of many that the scheme has been instigated by government instrumentalities on behalf of surrogate semi-autonomous arts administrative organisations for their survival benefit.**

13. If you do not support a resale royalty, do you consider that alternative support arguments are more appropriate? If so, what kind?

**It is not simply a matter of whether there should be one or other kind of programmatic approach to providing for the ongoing health and wellbeing of the arts by means of supporting its practitioners, or whether their heirs should be the key beneficiaries of their unique endeavours. Your question is a good starting point but one that needs to be addressed outside the immediate context of the concerns surrounding this one.**

14. What do you consider is the likely impact of your preferred position on the possible groups affected and on the Australian art market?

**If actually listened to in open rather than such pre-emptively one-sided group discussions as have taken place, as experienced comment, it would hopefully engender a more inclusively considered, less biased process of deliberation than has occurred thus far.**

15. Do you have any other issues?

**Yes, throughout this questionnaire, as demonstrated by the range of choices offered, it is implicitly presumed that the introduction of resale royalties in some form in the visual arts will benefit artists. This has never been demonstrated. Indeed the opposite has. The scheme has been discredited by artists in those countries where it has been implemented.**

**And yet, the process rolls on, without any substantiation from its promoting agencies, meanwhile inexorably asking prescriptive questions about variable means of obtaining a predetermined outcome: one of demonstrated negative impact: such, at the least, to indicate a need to return to the collective drawing board on a more inclusive and balanced industry representative basis, examining identifiable needs ahead of their best solutions.**

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